



# COMMONWEALTH of VIRGINIA

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

*DEPARTMENT OF ENVIRONMENTAL QUALITY*  
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Robert G. Burnley  
Director

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May 2, 2005

Mr. Donald S. Welsh, Regional Administrator  
U. S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Re: Application for Revised Authorization, Virginia Hazardous Waste Management Program

Dear Mr. Welsh:

I am pleased to submit the Commonwealth of Virginia's application for revised authorization for the Virginia Hazardous Waste Management Program. This application includes a Program Description, an Attorney General's Statement, and a Memorandum of Agreement, all with attachments. Copies of all applicable statutes and regulations are attached to the Program Description. The Attorney General's Statement has been signed by Senior Assistant Attorney General Roger L. Chaffe on behalf of Attorney General Jerry W. Kilgore.

On September 29, 2000, the Commonwealth received final authorization for its hazardous waste management program. On June 20, 2003, the Commonwealth received approval of Program Revision II. Since then, the Commonwealth's statutes and regulations have been updated to include federal regulatory changes through July 1, 2004. Also, several Commonwealth initiated changes have been developed to further protect the citizens and the environment. This application has been developed to demonstrate continuing equivalency of Virginia's program with the federal program, as defined by Subtitle C of the Resource Conservation and Recovery Act.

The documents enclosed are the same as those submitted March 24, 2005. I look forward to your approval to continue the implementation of this vital program in the Commonwealth.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Robert G. Burnley".  
Robert G. Burnley

Cc: Roger L. Chaffe, Esq.



# COMMONWEALTH of VIRGINIA

*Office of the Attorney General*

*Richmond 23219*

**Judith Williams Jagdmann**  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804 - 786 - 2071  
804 - 371 - 8946 TDD

May 2, 2005

Robert G. Burnley, Director  
Department of Environmental Quality  
629 East Main Street  
Richmond, Virginia 23219

Re: Attorney General's Statement of Adequate Authority  
40 C.F.R. § 271.7

Dear Mr. Burnley:

Under the authority delegated to me by Attorney General Jagdmann, I am pleased to certify that the laws and regulations of the Commonwealth provide adequate authority for the Virginia Waste Management Board ("Board") and the Virginia Department of Environmental Quality ("DEQ") to carry out the program described under 40 C.F.R. § 271.6 and to meet other applicable requirements of 40 C.F.R. § 271. The application submitted to the U.S. Environmental Protection Agency ("EPA"), including the Demonstration of Adequate Authority prepared by DEQ, is an accurate statement of Virginia law on this subject. The authorities cited in this application are now in effect.

Moreover, as Director of the DEQ, you have authority to enter into and carry out the provisions of the Memorandum of Agreement ("MOA") between the Board and EPA under Va. Code Ann. §§ 10.1-1185, -1402(9), -1404 and -1405. The MOA is not an agency action or regulation under the Virginia Administrative Process Act, Va. Code Ann. § 2.2-4000 through -4033, and accordingly, there is no requirement that the MOA be promulgated as a rule in order to be binding. A review of the provisions of the MOA indicates that there is no conflict with state laws and regulations.

With kindest regards, I am

Sincerely,

A handwritten signature in dark ink, appearing to read "Roger L. Chaffe".

Roger L. Chaffe  
Senior Assistant Attorney General

cc: Cathie F. Hutchins, AAG

**COMMONWEALTH OF VIRGINIA**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY**

Demonstration of Adequate Authority  
For  
Virginia Hazardous Waste Management Program Revisions  
From Program Revision II through June 30, 2004

Program Revision III

March 24, 2005

# **VIRGINIA PROGRAM REVISION III**

## **DEMONSTRATION OF ADEQUATE AUTHORITY FOR THE VIRGINIA HAZARDOUS WASTE MANAGEMENT PROGRAM, INCLUDING CHANGES TO THE FEDERAL RCRA PROGRAM THROUGH JUNE 30, 2004**

This document provides, as supplemented by the documents submitted in Revision I, Revision II, and the original application for authorization, a demonstration of the statutory and regulatory authority for the Virginia Hazardous Waste Management Program. The specific authorities cited herein are contained in statutes or regulations adopted and effective at the date of this Demonstration. These authorities supplement those previously described in the Virginia Demonstrations of Adequate Authority for the Virginia Hazardous Waste Management Program dated May 12, 2000 and September 18, 2002, and in the letter dated January 12, 1998, regarding Virginia's Environmental Assessment Privilege and Immunity Law.

Since the Commonwealth received approval of Program Revision II on June 20, 2003, it has improved its program and amended its regulations to incorporate changes to the federal regulations through June 30, 2004. Commonwealth-initiated changes are addressed herein. The Commonwealth initiates this, Revision III, of its authorization under 40 CFR 271.21 to seek approval of the amended program. The pages below discuss those changes to the Commonwealth's statutes and regulations for which approval is sought. They address the differences between the Commonwealth's requirements and the parallel federal provisions.

### **STATUTES**

Statutes addressed in the previous program revision submissions to the Environmental Protection Agency have not been amended, modified, or revised with regard to issues relevant to authorization. The statutory authorities for the Commonwealth are documented in the May 12, 2000 Demonstration of Adequate Authority

### **JUDICIAL DECISIONS**

There have been no judicial decisions that are known to limit or interfere with Virginia's authority to implement, administer, or enforce the authorized hazardous waste program.

**VIRGINIA - REGULATORY DOCUMENTATION**  
**Federal Amendments July 1, 2001 - June 30, 2004 & Virginia-initiated Amendments through July 1, 2004)**

**VIRGINIA PROGRAM REVISION III**

**REGULATORY DOCUMENTATION FOR THE PROGRAM REVISIONS FOR WHICH  
THE COMMONWEALTH IS SEEKING APPROVAL**  
**(Includes Federal Regulatory Changes from Program Revision II through June 30, 2004  
and Virginia-initiated Program Changes through July 1, 2004)**

**Title of Regulations:** 9 VAC 20-60, Virginia Hazardous Waste Management Regulations

**Effective Dates of Regulations:**

Immediate Final Rule 2002	March 26, 2003	(Adoption of July 1, 2002 CFR)
Immediate Final Rule 2003	November 5, 2003	(Adoption of July 1, 2003 CFR)
Immediate Final Rule 2004	September 8, 2004	(Adoption of July 1, 2004 CFR)
Amendment 16	July 1, 2003	(Commonwealth-initiated Changes)
Amendment 17	July 1, 2004	(Commonwealth-initiated Changes)

**Statutory Authority:** §§ 10.1-1402 and 10.1-1402.1 and Article 4 (§ 10.1-1426 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia. Legislation cited is current through the 2004 session of the Virginia General Assembly.

**Date Prepared:** March 24, 2005

**A. COMMONWEALTH ANALOGS TO FEDERAL REGULATIONS**

At VAC 20-60-18, in Immediate Final Rule 2002, Virginia incorporated by reference the federal regulations as published on July 1, 2002, in Immediate Final Rule 2003, Virginia incorporated by reference the federal regulations as published on July 1, 2003, and in Immediate Final Rule 2004, Virginia incorporated by reference the federal regulations as published on July 1, 2004. Virginia is seeking approval for program revisions federal regulatory changes published in the Federal Register from July 1, 2001 through June 30, 2004.

<b>Federal Rule Reference(s)</b>	<b>Date(s) Federal Rule Published</b>	<b>CFR Sections Affected by Federal Amend.</b>	<b>Commonwealth Citation(s)</b>	<b>Date Incorporated Into Commonwealth Regulations</b>
66 <u>FR</u> 35087	July 3, 2001	40 CFR 264	9 VAC 20-60-18 9 VAC 20-60-264 A	March 26, 2003
66 <u>FR</u> 50332	Oct. 3, 2001	40 CFR 261	9 VAC 20-60-18 9 VAC 20-60-261 A	March 26, 2003
66 <u>FR</u> 58258 67 <u>FR</u> 17119	Nov. 20, 2001 April 9, 2002	40 CFR 261 40 CFR 268	9 VAC 20-60-18 9 VAC 20-60-261 A 9 VAC 20-60-268 A	March 26, 2003
67 <u>FR</u> 2962	Jan. 22, 2002	40 CFR 260 40 CFR 264	9 VAC 20-60-18 9 VAC 20-60-260 A 9 VAC 20-60-264 A	March 26, 2003

# VIRGINIA - REGULATORY DOCUMENTATION

Federal Amendments July 1, 2001 - June 30, 2004 & Virginia-initiated Amendments through July 1, 2004)

Federal Rule Reference(s)	Date(s) Federal Rule Published	CFR Sections Affected by Federal Amend.	Commonwealth Citation(s)	Date Incorporated Into Commonwealth Regulations
67 <u>FR</u> 6792	Feb. 13, 2002	40 CFR 264 40 CFR 265 40 CFR 266 40 CFR 270	9 VAC 20-60-18 9 VAC 20-60-264 A 9 VAC 20-60-265 A 9 VAC 20-60-266 A 9 VAC 20-60-270 A	March 26, 2003
67 <u>FR</u> 6968	Feb. 14, 2002	40 CFR 266 40 CFR 270	9 VAC 20-60-18 9 VAC 20-60-266 A 9 VAC 20-60-270 A	March 26, 2003
67 <u>FR</u> 11251	Mar. 13, 2002	40 CFR 261	9 VAC 20-60-18 9 VAC 20-60-261 A	March 26, 2003
67 <u>FR</u> 48393	July 24, 2002	40 CFR 261 40 CFR 266 40 CFR 268	9 VAC 20-60-18 9 VAC 20-60-261 A 9 VAC 20-60-266 A 9 VAC 20-60-268 A	Nov. 5, 2003
67 <u>FR</u> 62618	Oct. 7, 2002	43 CFR 268	9 VAC 20-60-18 9 VAC 20-60-268 A	Nov. 5, 2003
67 <u>FR</u> 77687	Dec. 19, 2002	40 CFR 270	9 VAC 20-60-18 9 VAC 20-60-270 A	Nov. 5, 2003
68 <u>FR</u> 44659	July 30, 2003	40 CFR 261 40 CFR 279	9 VAC 20-60-18 9 VAC 20-60-261 A 9 VAC 20-60-279 A	August 26, 2004
68 <u>FR</u> 44652	July 30, 2003	40 CFR 261	9 VAC 20-60-18 9 VAC 20-60-261 A	August 26, 2004
68 <u>FR</u> 46951	August 7, 2003	40 CFR 261	9 VAC 20-60-18 9 VAC 20-60-261 A	August 26, 2004
68 <u>FR</u> 53517	September 11, 2003	40 CFR 261	9 VAC 20-60-18 9 VAC 20-60-261 A	August 26, 2004
69 <u>FR</u> 6567	February 11, 2004	40 CFR 268	9 VAC 20-60-18 9 VAC 20-60-268 A	August 26, 2004
69 <u>FR</u> 8828	February 26, 2004	40 CFR 261	9 VAC 20-60-18 9 VAC 20-60-261 A	August 26, 2004
69 <u>FR</u> 21754	April 22, 2004	40 CFR 261	9 VAC 20-60-18 9 VAC 20-60-261 A	August 26, 2004
69 <u>FR</u> 21737	April 22, 2004	40 CFR 262	9 VAC 20-60-18 9 VAC 20-60-262 A	August 26, 2004
69 <u>FR</u> 22602	April 26, 2004	40 CFR 264 40 CFR 264	9 VAC 20-60-18 9 VAC 20-60-264 A 9 VAC 20-60-265 A	August 26, 2004

**Interpretive Comment:** Since the Commonwealth has adopted these federal changes by reference without exceptions, the Commonwealth's regulations are identical, therefore equivalent, to federal regulations on these points.

## VIRGINIA - REGULATORY DOCUMENTATION

Federal Amendments July 1, 2001 - June 30, 2004 & Virginia-initiated Amendments through July 1, 2004)

### **B. FEDERAL PROGRAM REVISIONS FOR WHICH VIRGINIA IS NOT SEEKING AUTHORITY**

The Commonwealth is seeking authority for all Federal program revisions.

### **C. COMMONWEALTH-INITIATED CHANGES TO THE PREVIOUSLY AUTHORIZED PROGRAM**

#### **(Amendments 16 and 17: Amendments to 9 VAC 20-60. Virginia Hazardous Waste Management Regulations)**

In Amendments 16 and 17, Virginia amended its hazardous waste regulations to change the fee structure for permit applications, to add annual fees for facilities and large quantity generators, to shift the cost of certain public participation activities to applicants and petitioners, to require additional financial assurance documentation, and to allow for continuation of permits under specific circumstances. Virginia has also made wording changes and technical corrections in order to clarify its regulations; for example, “director” has been replaced by “department” in many locations. Significant changes are discussed below and an attached table identifies the location and nature of all changes.

<b>9 VAC 20-60-70</b>		
<b>Virginia Citation</b>	<b>Related Federal Analog</b>	<b>Virginia Analog Is:</b>
9 VAC 20-60-70 B	40 CFR 124 40 CFR 270	Equivalent
<b>Interpretive Comment:</b> Virginia previously required that permits for hazardous waste management facilities, including permits by rule, be the subject of a public hearing. This was more stringent than federal requirements of 40 CFR 124 and 40 CFR 270. Since public hearings are not always necessary, this requirement has been removed. Virginia now has the same requirement for public hearings as the federal program which it incorporates by reference in 9 VAC 20-60-124 A and 9 VAC 20-60-270 A. Since the federal and Virginia are identical, they are equivalent.		

<b>9 VAC 20-60-124</b>		
<b>Virginia Citation</b>	<b>Related Federal Analog</b>	<b>Virginia Analog Is:</b>
9 VAC 20-60-124 B 7	40 CFR 124.10, 40 CFR 124.10(a)(1)(ii), and 40 CFR 124.10(b)(2)	Equivalent
9 VAC 20-60-124 B 9	None	Broader In Scope
<b>Interpretive Comment:</b> Virginia now requires the applicant for permit actions and petitioners for variance to publish and announce the required public hearings at their expense. The department will provide the necessary draft text and details of the advertisement and publication. If necessary, the department has the right to proceed with publishing and announcement if circumstances warrant. The federal regulations do not address who shall bear these expenses; therefore, the Virginia requirements are broader in scope.		

<b>9 VAC 20-60-262</b>		
<b>Virginia Citation</b>	<b>Related Federal Analog</b>	<b>Virginia Analog Is:</b>
9 VAC 20-60-262 B 8	None	Broader In Scope
<b>Interpretive Comment:</b> Beginning July 1, 2004, Virginia requires large quantity generators to pay an annual fee to be use to help fund the regulatory programs. This item is added so as to cross reference the fees schedule and payment rules located in Part XII of the regulations. As a fee requirement, it is broader in scope.		

**VIRGINIA - REGULATORY DOCUMENTATION**  
**Federal Amendments July 1, 2001 - June 30, 2004 & Virginia-initiated Amendments through July 1, 2004)**

<b>9 VAC 20-60-264</b>		
<b>Current Virginia Citation</b>	<b>Related Federal Analog</b>	<b>Virginia Analog Is:</b>
9 VAC 20-60-264 General	40 CFR 264	Not Applicable
<b>Summary Comment:</b> Item B 6 was replaced with B 16; Items B8 through B 22 are new requirements. These changes limit the scope of financial assurance options by adding more specific requirements, require additional financial assurance documentation, and give the director authority to collect additional documentation or data if necessary.		
9 VAC 20-60-264 B 6 (former)	40 CFR 264.143(h), 40 CFR 264.145(h), and 40 CFR 264.151	Not Applicable
<b>Interpretive Comment:</b> The text of this section was removed and replaced with 9 VAC 20-60-264 B 16, which is also more stringent than federal requirements.		
9 VAC 20-60-264 B 8	40 CFR 264.142	More Stringent
<b>Interpretive Comment:</b> This section enables the director to require a written copy of the detailed closure cost estimate. 40 CFR 264.142 only requires that the estimate be available at the facility.		
9 VAC 20-60-264 B 9	40 CFR 264.143(b)(1), 40 CFR 264.143(c)(1), 40 CFR 264.145(b)(1), and 40 CFR 264.145(c)(1)	More Stringent
<b>Interpretive Comment:</b> In addition to federal requirements, this section requires sureties to be licensed in Virginia under §38.2-1000 et seq. of the Code of Virginia.		
9 VAC 20-60-264 B 10	40 CFR 264.143(b), 40 CFR 264.143(c), 40 CFR 264.145(b), and 40 CFR 264.145(c)	More Stringent
<b>Interpretive Comment:</b> In addition to federal requirements, this section requires documentation of the recording of surety bonds and power of attorney in accordance with §38.2-2416 of the Code of Virginia.		
9 VAC 20-60-264 B 11	40 CFR 264.143(c)(5)	Equivalent
<b>Interpretive Comment:</b> This section substitutes the Commonwealth's process for making an administrative determination under § 2.2-4000 of the Code of Virginia for section 3008 of RCRA.		
9 VAC 20-60-264 B 12	40 CFR 264.143(d)(8)	Equivalent
<b>Interpretive Comment:</b> This section makes it clear that the director may draw on a letter of credit following an administrative determination of failure by the owner or operator to perform the required closure.		
9 VAC 20-60-264 B 13	40 CFR 264.143(e)(1)	More Stringent
<b>Interpretive Comment:</b> In addition to federal requirements, this section requires that a complete copy of the insurance policy offered for financial assurance be submitted to the department with the certificate of insurance. The section also requires the specific and more rigorous requirements of §38.2-1000 et seq. of the Code of Virginia instead of the lesser federal provision that the insurer be licensed and eligible in some (unspecified) state.		
9 VAC 20-60-264 B 14	40 CFR 264.143(f)(3)(ii), 40 CFR 264.145(f)(3)(ii), 40 CFR 264.147(f)(3)(ii)	More Stringent
<b>Interpretive Comment:</b> In addition to federal requirements for submission of an annual auditor's report, this section requires the owner or operator to submit audited annual financial statements.		

## VIRGINIA - REGULATORY DOCUMENTATION

Federal Amendments July 1, 2001 - June 30, 2004 & Virginia-initiated Amendments through July 1, 2004)

9 VAC 20-60-264 B 15	40 CFR 264.143(f)(3), 40 CFR 264.145(f)(3), 40 CFR 264.147(f)(3),	More Stringent
<b>Interpretive Comment:</b> In addition to federal requirements, this section requires submittal of confirmation from the bond rating firm of the most recent rating and required that the rating be above specified rankings.		
9 VAC 20-60-264 B 16	40 CFR 264.143(h), 40 CFR 264.145(h)	More Stringent
<b>Interpretive Comment:</b> This section, in contrast to federal requirements, only allows the same financial mechanism to be used for multiple facilities if all the facilities are within Virginia.		
9 VAC 20-60-264 B 17	40 CFR 264.144	More Stringent
<b>Interpretive Comment:</b> This section enables the director to require submittal of a written copy of the detailed closure cost estimate. 40 CFR 264.144 only requires that the estimate be available at the facility.		
9 VAC 20-60-264 B 18	40 CFR 264.144(b)	More Stringent
<b>Interpretive Comment:</b> In addition to federal requirements, this section requires that the owner operator continue to adjust the post-closure cost estimate through the post-closure period.		
9 VAC 20-60-264 B 19	40 CFR 264.144(c)	More Stringent
<b>Interpretive Comment:</b> In addition to federal requirements, this section requires that the owner operator continue to adjust the post-closure cost estimate through the post-closure period including revisions to the post-closure plan if the plan revisions increase the costs.		
9 VAC 20-60-264 B 20	40 CFR 264.145(c)(5)	Equivalent
<b>Interpretive Comment:</b> This section substitutes the Commonwealth's process for making an administrative determination under § 2.2-4000 of the Code of Virginia for section 3008 of RCRA.		
9 VAC 20-60-264 B 21	40 CFR 264.145(d)(9)	Equivalent
<b>Interpretive Comment:</b> This section substitutes the Commonwealth's process for making an administrative determination under § 2.2-4000 of the Code of Virginia for section 3008 of RCRA.		
9 VAC 20-60-264 B 22	40 CFR 264.145(e)(1)	More Stringent
<b>Interpretive Comment:</b> In addition to federal requirements, this section requires that a complete copy of the insurance policy offered for financial assurance be submitted to the department with the certificate of insurance. The section also requires the specific and more rigorous requirements of §38.2-1000 et seq. of the Code of Virginia instead of the lesser federal provision that the insurer be licensed and eligible in some (unspecified) state. The insurance documentation required by this section must be received before receipt of the waste for storage, treatment and disposal; whereas, the federal requirements only specifies that it must be received prior to receipt of waste for disposal.		

## VIRGINIA - REGULATORY DOCUMENTATION

Federal Amendments July 1, 2001 - June 30, 2004 & Virginia-initiated Amendments through July 1, 2004)

<b>9 VAC 20-60-265</b>		
9 VAC 20-60-265 B 8	40 CFR 265.143(g) and 40 CFR 265.145(g)	More Stringent
<b>Interpretive Comment:</b> This section, in contrast to federal requirements, only allows the same financial mechanism to be used for multiple facilities if all the facilities are within Virginia.		
<b>9 VAC 20-60-270</b>		
9 VAC 20-60-270 B 15	None	Equivalent
<b>Interpretive Comment:</b> This section provides that the conditions of an expired state-permit continue in force until the effective date of the new permit if the permittee has submitted a timely reapplication that is a complete application for a new permit; and the director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit. Permits that are continued remain fully effective and enforceable. When the permittee is not in compliance with the conditions of the expiring or expired permit, this section lists the director's options. USEPA does not address in its regulations how it will continue a state-issued-permit; therefore, this provision allows the Commonwealth to exercise the same policy as USEPA and is equivalent to the federal regulations at 40 CFR 270.51.		
9 VAC 20-60-270 B 16	None	Broader In Scope
<b>Interpretive Comment:</b> Beginning July 1, 2004, Virginia requires all permitted facilities, all facilities operating under interim status, and all facilities subject to an order or agreement to pay an annual fee to be used to help fund the regulatory programs. This item is added to provide a cross reference to the fees schedule and payment rules located in Part XII of the regulations. As a fee requirement, it is broader in scope.		
<b>9 VAC 20-60-315</b>		
9 VAC 20-60-315 D	None	More Stringent
<b>Interpretive Comment:</b> In addition to federal notifications requirements, the Commonwealth requires large quantity generators to notify the department in writing when their status changes or when they cease to be a large quantity. They must also place a record of the notification in their operating record.		
<b>9 VAC 20-60-420</b>		
9 VAC 20-60-420 A	None	Equivalent
<b>Interpretive Comment:</b> The Commonwealth added a clarifying statement to ensure that its transporter permitting requirements are not applied to universal waste transporters.		

## VIRGINIA - REGULATORY DOCUMENTATION

Federal Amendments July 1, 2001 - June 30, 2004 & Virginia-initiated Amendments through July 1, 2004)

9 VAC 20-60-1260, -1270, -1280, -1283, -1284, -1285, and -1286		
9 VAC 20-60-1260 A 9 VAC 20-60-1260 B 9 VAC 20-60-1260 E 9 VAC 20-60-1260 G 9 VAC 20-60-1260 H 9 VAC 20-60-1270 A 9 VAC 20-60-1270 C 9 VAC 20-60-1270 E 9 VAC 20-60-1270 F 9 VAC 20-60-1280 Tag Line 9 VAC 20-60-1280 B 9 VAC 20-60-1280 D 9 VAC 20-60-1283 All 9 VAC 20-60-1284 All 9 VAC 20-60-1285 All 9 VAC 20-60-1286 New	None	Broader In Scope
<b>Interpretive Comment:</b> Part XII (9VAC20-60-1260 through 9VAC20-60-1286) applies to all permitted facilities, to facilities operating under interim status, to facilities subject to an order or agreement, and to all large quantity generators. In addition to permit application fees previously required, a permitted treatment, storage, and disposal facility is assessed an annual fee. A facility that operates under interim status, a facility that is subject to an order or agreement, and a large quantity generator are also assessed annual fees. These new fees, new fee schedules, payment instructions, and related regulations begin July 1, 2004.		

## List of Changes to Virginia Hazardous Waste Management Regulations in Amendments 16 and 17

Location of Change	Description of change
9 VAC 20-60-17 "EPA Identification Number"	"director" → "department"
9 VAC 20-60-18	Deleted second occurrence: "March 26, 2003 " Added: "or November 5, 2003, whichever is later."
9 VAC 20-60-40 A	typographical error corrected
9 VAC 20-60-70 B, subsequent sections renumbered	Deleted: "B. All permits for hazardous waste management facilities, including permits by rule, will be the subject of a public hearing, as specified in 9VAC20-60-270."
9 VAC 20-60-124 B 7, subsequent sections renumbered	Added: "7. In 40 CFR 124.10 procedures are described for giving public notice in newspapers and radio broadcast when a draft permit has been prepared (40 CFR 124.10(a)(1)(ii)) or when a public hearing will be held on the draft permit (40 CFR 124.10(b)(2)). The applicant for a permit shall arrange for the newspaper publication and radio broadcast and bear the cost of the publication and broadcast. The department shall send notification to the applicant that the publication and broadcast are required and the notification shall include the text of the notice, dates of publication and broadcast, and acceptable newspapers and radio stations wherein the notice may be published. The department may arrange for the newspaper publication and radio broadcast and require the applicant to remit the cost of such publication and broadcast."
9 VAC 20-60-124 B.9	Added: "9. The petitioner for a variance from any regulation shall arrange for any newspaper publication and radio broadcast required under these regulations (9 VAC 20-60) and to bear the cost of such publication and broadcast. The department shall send notification to the applicant that the publication and broadcast are required and the notification shall include the text of the notice, dates of publication and broadcast, and acceptable newspapers and radio stations wherein the notice may be published. The department may arrange for the newspaper publication and radio broadcast and require the applicant to remit the cost of such publication and broadcast."
9 VAC 20-60-261 B 1	"director" → department's name and address
9 VAC 20-60-262 B 4	"director" → "department" at 3 locations
9 VAC-20-60-262 B 8	Added: "8. In addition to the requirements of this section, large quantity generators are required to pay an annual fee. The fee schedule and fee regulations are contained in Part XII (9VAC20-60-1260 through 9VAC20-60-1285).".
9 VAC 20-60-264 B 6, subsequent sections renumbered	Deleted: "6. In 40 CFR 264.143(h), 40 CFR 264.145(h), and 40 CFR 264.151, an owner or operator may use the same financial mechanism for multiple facilities. If the facilities covered by the mechanism are located in more than one state, identical evidence of financial assurance must be submitted to and maintained with all RCRA authorized state agencies where facilities covered by the financial mechanism are located or with the regional administrators where facilities are located in states without RCRA authorization."
9 VAC 20-60-264 B 8, subsequent sections renumbered	Added: "8. The owner or operator must submit the detailed, written closure cost estimate described in 40 CFR 264.142 upon the written request of the director."
9 VAC 20-60-264 B 9, subsequent sections renumbered	Added: "9. In 40 CFR 264.143 (b)(1), 40 CFR 264.143(c)(1), 40 CFR 264.145(b)(1), and 40 CFR 264.145(c)(1), any surety issuing surety bonds to guarantee payment or performance must be licensed pursuant to Chapter 10 (§38.2-1000 et seq.) of the Code of Virginia."
9 VAC 20-60-264 B 10, subsequent sections renumbered	Added: "10. In 40 CFR 264.143(b), 40 CFR 264.143(c), 40 CFR 264.145(b) and 40 CFR 264.145(c), any owner or operator demonstrating financial assurance for closure or post-closure care using a surety bond shall submit with the surety bond a copy of the deed book page documenting that the power of attorney of the attorney-in-fact executing the bond has been recorded pursuant to §38.2-2416 of the Code of Virginia."
9 VAC 20-60-264 B 11, subsequent sections renumbered	Added: '11. Where 40 CFR 264.143(c)(5) the phrase "final administrative determination pursuant to section 3008 of RCRA" appears, it shall be replaced with "final determination pursuant to Chapter 40 (§ 2.2-4000 et seq. of the Code of Virginia)".'

9 VAC 20-60-264 B 12, subsequent sections renumbered	Added: '12. The following text shall be substituted for 40 CFR 264.143(d)(8): "Following a final administrative determination pursuant to Chapter 40 (§2.2-4000 et seq.) of the Code of Virginia that the owner or operator has failed to perform final closure in accordance with the approved closure plan, the applicable regulations or other permit requirements when required to do so, the director may draw on the letter of credit." '
9 VAC 20-60-264 B 13, subsequent sections renumbered	Added: "13. The following text shall be substituted for 40 CFR 264.143(e)(1): "An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance, along with a complete copy of the insurance policy, to the department. An owner or operator of a new facility must submit the certificate of insurance along with a complete copy of the insurance policy to the department at least 60 days before the date on which the hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed pursuant to Chapter 10 (§38.2-1000 et seq.) of the Code of Virginia." "
9 VAC 20-60-264 B 14, subsequent sections renumbered	Added: '14. The following text shall be substituted for 40 CFR 264.143(f)(3)(ii), 40 CFR 264.145(f)(3)(ii) and 40 CFR 264.147(f)(3)(ii): "A copy of the owner's or operator's audited financial statements for the latest completed fiscal year; including a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and" '
9 VAC 20-60-264 B 15, subsequent sections renumbered	Added: "15. In addition to the other requirements in 40 CFR 264.143(f)(3), 40 CFR 264.145(f)(3) and 40 CFR 264.147(f)(3), an owner or operator must submit confirmation from the rating service that the owner or operator has a current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's if the owner or operator passes the financial test with a bond rating as provided in subsection 1(ii)(A)."
9 VAC 20-60-264 B 16, subsequent sections renumbered	Added: '16. The following text shall be substituted for 40 CFR 264.143(h) and 40 CFR 264.145(h): "An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility in Virginia. Evidence of financial assurance submitted to the department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure [ or post-closure ] assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure or post-closure care of any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.'
9 VAC 20-60-264 B 17, subsequent sections renumbered	Added: "17. In 40 CFR 264.144, the owner or operator must submit a detailed, written post-closure cost estimate upon the written request of the director."
9 VAC 20-60-264 B 18, subsequent sections renumbered	Added: '18. The following text shall be substituted for 40 CFR 264.144(b): "During the active life of the facility and the post-closure period, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 40 CFR 264.145. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the department as specified in 40 CFR 264.145(f)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U. S. Department of Commerce in its <i>Survey of Current Business</i> as specified in 40 CFR 264.142(b)(1) and (2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year. a. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate. b. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost

	estimate by the latest inflation factor.”
9 VAC 20-60-264 B 19, subsequent sections renumbered	Added: ‘19. The following text shall be substituted for 40 CFR 264.144(c): “During the active life of the facility and the post-closure period, the owner or operator must revise the post-closure cost estimate within 30 days after the director has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in §264.144(b).”
9 VAC 20-60-264 B 20, subsequent sections renumbered	Added: ‘20. Where in 40 CFR 264.145(c)(5) the phrase “final administrative determination pursuant to section 3008 of RCRA” appears, it shall be replaced with “final determination pursuant to Chapter 40 (§ 2.2-4000 et seq. of the Code of Virginia”.
9 VAC 20-60-264 B 21, subsequent sections renumbered	Added: ‘21. The following text shall be substituted for 40 CFR 264.145(d)(9): “Following a final administrative determination pursuant to Chapter 40 (§ 2.2-4000 et seq.) of the Code of Virginia that the owner or operator has failed to perform post-closure in accordance with the approved post-closure plan, the applicable regulations, or other permit requirements when required to do so, the director may draw on the letter of credit.”
9 VAC 20-60-264 B 22, subsequent sections renumbered	Added: ‘22. The following text shall be substituted for 40 CFR 264.145(e)(1): “An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the department. An owner or operator of a new facility must submit the certificate of insurance along with a complete copy of the insurance policy to the department at least 60 days before the date on which the hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of the Code of Virginia.”
9 VAC 20-60-264 B 27	“director” → “department”
9 VAC 20-60-264 B 31 a. and d.	“director” → “department”
9 VAC 20-60-265 B 3	“director” → “department”
9 VAC 20-60-265 B 7	“director” → “department” and deleted “or his designee”
9 VAC 20-60-265 B 8	Deleted: “8. In 40 CFR 265.143(g) and 40 CFR 265.145(g), an owner or operator may use the same financial mechanism for multiple facilities. If the facilities covered by the mechanism are located in more than one state, identical evidence of financial assurance must be submitted to and maintained with all RCRA authorized state agencies where facilities covered by the financial mechanism are located or with the regional administrators where facilities are located in states without RCRA authorization.” Added: “8. The following text shall be substituted for 40 CFR 265.143(g) and 40 CFR 265.145(g): “An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility in Virginia. Evidence of financial assurance submitted to the department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure or post-closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure or post-closure care of any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.”
9 VAC 20-60-270 B 5	“director” → “department” at 2 locations
9 VAC 20-60-270 B 6	“director” → “department” at 2 locations Added “to the department’s” and deleted “his” in fourth sentence
9 VAC 20-60-270 B 7 c.(1)	“director” → “department”
9 VAC 20-60-270 B 15	Added: “15. The conditions of an expired permit continue in force until the effective date of the new permit if the permittee has submitted a timely reapplication that is a complete application for a new permit; and the director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit. Permits that are continued remain fully effective and enforceable. When the permittee is not in compliance with the conditions of the expiring or expired permit, the

	director may choose to do any or all of the following: a. Initiate enforcement action based on the permit that has been continued; b. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease activities authorized by the continued permit or be subject to enforcement action for operating without permit; c. Issue a new permit with appropriate conditions; or d. Take other actions authorized by this chapter."
9 VAC 20-60-270 B 16	Added: "16. Part XII (9VAC20-60-1260 through 9VAC20-60-1285) of this chapter applies to all permitted facilities, to facilities operating under interim status, to facilities subject to an order or agreement, and to all large quantity generators. In addition to permit application fees, a permitted treatment, storage, and disposal facility is assessed an annual fee. A facility that operates under interim status, a facility that is subject to an order or agreement, and a large quantity generator are also assessed annual fees."
9 VAC 20-60-305 A	"director" → "department"
9 VAC 20-60-305 C	"director" → "department"
9 VAC 20-60-315 A	"director" → "department"
9 VAC 20-60-315 B	"director" → "department"
9 VAC 20-60-315 C	"director" → "department"
9 VAC 20-60-315 D	"(Reserved.)" → "Anyone who becomes a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record. Any large quantity generator who ceases to be a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record."
9 VAC 20-60-315 H	"director" → "department"
9 VAC 20-60-328 A	"director" → "department"
9 VAC 20-60-328 B	"director" → "department" at 2 locations
9 VAC 20-60-420 A	Added sentence to end: "Nothing in this Part (9VAC20-60-420 through 9VAC20-60-500) shall be construed as imposing any requirement on transporters of or the transportation of universal waste not otherwise imposed in 9VAC20-60-273."
9 VAC 20-60-440 A	"director" → "department"
9 VAC 20-60-440 B	"director" → "department"
9 VAC 20-60-440 E	"director" → "department" and deleted "or his designee"
9 VAC 20-60-450 D	"director" → "department"
9 VAC 20-60-450 E	"director" → "department" at 2 locations
9 VAC 20-60-450 G	"director" → "department" "director or his representative" → "department"
9 VAC 20-60-490 C 4	Deleted: "Director,"
9 VAC 20-60-490 E	"director" → "department" and deleted "or his designee"
Part XII	Added: "and Annual" to the title of the part after "Application."
9 VAC 20-60-1260 A	Deleted: " permit issuance " Added: ", Part IV (9VAC20-60-305 et seq.)" to the listing of citations.
9 VAC 20-60-1260 B	Added: ", to facilities operating under interim status, to facilities subject to an order or agreement, and to all large quantity generators." to the end of the first sentence and "et seq." to the end of the second sentence.
9 VAC 20-60-1260 E	Added: "The holder shall not be assessed a permit modification fee for minor modifications." to the end of the paragraph
9 VAC 20-60-1260 G	"Part XII" → "9VAC20-60-1270" at 4 locations
9 VAC 20-60-1260 H	Deleted: "H. The effective date of Part XII of this chapter is October 1, 1984."
9 VAC 20-60-1270 A 1.	Added: "or renewed" before "permit" in first sentence.
9 VAC 20-60-1270 A 2.	Deleted last sentence, " These schedules will be re-evaluated annually and the results of such re-evaluations will be used to recommend to the Virginia Waste Management Board the necessary adjustments."
9 VAC 20-60-1270 C 1.	Added: "or renewed" before "hazardous" in first sentence.
9 VAC 20-60-1270 E	Added: "not" before "assessed a fee" before "assessed" in second sentence.

	Deleted: ". shown in 9VAC20-60-1285 D" at end of second sentence.
9 VAC 20-60-1270 F	Added to end of paragraph: "No permit fee will be assessed for emergency treatment, storage, or disposal necessary for the remediation of abandoned or orphaned hazardous waste by the U. S. Environmental Protection Agency, the Virginia Department of Environmental Quality, the Virginia Department of Emergency Management, the Virginia State Police the Virginia Department of Transportation, a U.S. Department of Defense Explosive Ordnance Disposal Team, a U. S. Army Technical Escort Unit or other Federal government entities trained in explosive or munitions emergency response. No permit fee will be assessed for emergency treatment, storage, or disposal when a determination has been made by the Commonwealth that circumstances dictate expedient action to protect human health and environmental quality."
9 VAC 20-60-1280 Tag Line	Changed title to: "Payment of application fees."
9 VAC 20-60-1280 B	"Acceptable payment is cash or check made payable to the Commonwealth of Virginia, Department of Environmental Quality." → "Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia", and shall be sent to the Department of Environmental Quality, Receipts Control, P. O. Box 10150, Richmond, VA 23240. When the department is able to accept electronic payments, payments may be submitted electronically."
9 VAC 20-60-1280 D	"director" → "department"
9 VAC 20-60-1283	Added new section: "9 VAC 20-60-1283. Determination of annual fee amount." to require that facilities, including interim status facilities and facilities subject to an order or agreement, pay an annual fee to the department.
9 VAC 20-60-1284	Added new section: "9 VAC 20-60-1284. Payment of annual fees." to establish the method for the payment of annual fees.
9 VAC 20-60-1285 Tag Line	Changed title to: "Permit application fee and annual fee schedules."
9 VAC 20-60-1285	Effective date changed from "October 1, 1984" to "July 1, 2004" Sections reformatted from schedule in text into a table. All fees increased in amount and text clarifications were added. Annual fees tables added. Numerical values in examples removed creating formulae.
9 VAC 20-60-1286	Added new section: "9VAC20-60-1286. Discounted annual fees for Environmental Excellence program participants." This section defines how a program may receive discounts from annual fees assessed based on participation in an "Environmental Excellence" program.
9 VAC 20-60-1370 C	"director" → "department"
9 VAC 20-60-1380 B	"director" → "department" "or his designee" added to second sentence of second paragraph
9 VAC 20-60-1390 A 1.d.	"director" → "department"
9 VAC 20-60-1420 A 1.	"director" → "department"
9 VAC 20-60-1420 B 1.	"director" → "department"
9 VAC 20-60-1420 C 2.	"director" → "department" at 5 locations

# **Commonwealth of Virginia**

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **SUPPLEMENT TO THE PROGRAM DESCRIPTION**

#### **REVISION III, 2004**

On December 18, 1984, the hazardous waste management program in Virginia received final authorization from the U. S. Environmental Protection Agency (USEPA) for the base program functions. On September 20, 2000, Revision I was approved by USEPA and included final authorization of the full program functions in accord with 40 CFR 271. On June 20, 2003, Revision II was approved by the USEPA. Revision I included a full Program Description and Revision II included a supplement to the Program Description that replaced several sections, reflecting program changes between 2000 and 2002. This 2004 supplement to the Program Description describes the program changes between 2002 and 2004; however, the only substantive changes to the program are the amendments of the regulations and only those amendments are addressed herein.

The Virginia Waste Management Board adopts two kinds of amendments to its Hazardous Waste Management Regulations, 9 VAC 20-60. The first consists of sequentially numbered amendments that, in general, include state-initiated changes to the regulations. These normally apply to parts of the regulations that are broader in scope than the federal regulations, such as permit fee requirements and transporter permitting. The second consists of immediate final rules. Virginia's regulations consist largely of incorporations of federal regulations located in Title 40 of the Code of Federal Regulations. Since the federal regulations are frequently amended, 9 VAC 20-60-18 of the Virginia regulations defines the date of the federal regulation that are incorporated. With immediate final rules, the Board amends 9 VAC 20-60-18 to move that date forward so as to incorporate the most recent federal regulatory amendments.

Revision III includes five amendments to the Virginia Waste Management Board's Hazardous Waste Management Regulations, 9 VAC 20-60. The immediate final rules, IFR 2002, IFR 2003 and IFR 2004, moved the date in 9 VAC 20-60-18 forward so as to incorporate federal regulatory amendments through July 1, 2002, July 1, 2003, and July 1, 2004, respectively. In Amendments 16 and 17, the Board amended its hazardous waste regulations to change the fee structure for permit applications, to add annual fees for facilities and large quantity generators, shift the cost of certain public participation activities to applicants and petitioners, to require additional financial assurance documentation, and to allow for continuation of permits under specific circumstances. These amendments also made wording changes and technical corrections in order to clarify the regulations; for example, "director" has been replaced by "department" in many locations.

The documents of Revision III explain in detail the changes made to the regulations in the five amendments. The Department of Environmental Quality makes these regulations and pertinent parts of the federal regulations available through its website ([www.deq.virginia.gov](http://www.deq.virginia.gov)).

**MEMORANDUM OF AGREEMENT BETWEEN**  
**THE COMMONWEALTH OF VIRGINIA**  
**AND**  
**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION III**

**I. GENERAL**

This Memorandum of Agreement (hereinafter “MOA”) establishes responsibilities and procedures pursuant to 40 CFR 271.8 for the Commonwealth of Virginia (hereinafter “State”) Hazardous Waste Program authorized under Section 3006 of the Resource Conservation and Recovery Act (hereinafter “RCRA” or the “Act”) of 1976 (42 U.S.C. 6901 *et seq.*), as amended (Public Laws 94-580, 96-482, 98-616), (hereinafter “State Program” or “Program”), and the United States Environmental Protection Agency Region III (hereinafter “EPA”).

This MOA further sets forth the manner in which the State and EPA will coordinate in the State's administration and enforcement of the State's program and, pending additional authorization, EPA's administration of the non-authorized provisions of the Hazardous and Solid Waste Amendments of 1984 (“HSWA”), and EPA's regulations thereunder. For purposes of this MOA, references to “RCRA” include HSWA.

This MOA is entered into on behalf of the State by the Director of the Department of Environmental Quality (hereinafter “Director”) to the fullest extent of his authority to act as a representative of the Commonwealth in his capacity as Director<sup>1</sup>, and by the Regional Administrator, EPA Region III (hereinafter “Regional Administrator”).

Nothing in this MOA will be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities and authorities under Subtitle C of RCRA. Nothing in this MOA will be construed to contravene any provision of 40 CFR part 271 or any other Federal law or regulation.

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<sup>1</sup> Unless the context indicates otherwise, the terms “Director” and “State” are used interchangeably.

Further, nothing in this MOA shall be construed to restrict the Commonwealth in the administration of the State Program required in the Waste Management Act, §10.1-1400, *et seq.* of the 1950 Code of Virginia, as amended, or the Virginia Hazardous Waste Management Regulations, Title 9, Environment, Virginia Administrative Code (hereinafter 9 VAC 20-60-10 *et seq.*) or other state law.

Nothing in this MOA will be deemed to confer any rights or privileges on any person or entity not a party to this agreement.

The State and EPA (hereinafter “Parties” or, individually, “Party”) will review the MOA jointly at least once a year.

This MOA supersedes the MOA that became effective on June 20, 2003. This MOA may be modified upon the initiative of either Party to ensure consistency with State Program modifications or for any other purpose mutually agreed upon. Any revisions or modifications to this MOA will be in writing and must be signed by the Director and the Regional Administrator. This MOA will remain in effect until such time as EPA withdraws State Program authorization or the State voluntarily transfers authority to EPA according to the criteria and procedures established in 40 CFR 271.22 and 271.23, or until the MOA is superseded by a new MOA executed by the Parties.

## **II. POLICY STATEMENT**

Each of the Parties to this MOA is responsible for ensuring that its obligations under Subtitle C of RCRA are met. Upon granting of final authorization by EPA, the State will assume primary responsibility for implementing the authorized provisions of the State hazardous waste program within its boundaries. The State will conduct its hazardous waste program consistent with existing EPA program policies and guidance<sup>2</sup>, and intends to follow future EPA program policies and guidance, consistent with State law and regulations. EPA will retain its responsibility to ensure full and faithful execution of the requirements of RCRA, including direct implementation of HSWA in the event the State is not authorized to act thereunder. The Director and the Regional Administrator agree to maintain a high level of cooperation between their respective staffs in a partnership to assure successful and effective

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<sup>2</sup> These policies and guidance include, at a minimum, the OSWER Consolidated Guidance; the Office of Enforcement and Compliance Assurance MOA guidance; RCRA Civil Penalty Policy dated October 26, 1990; National Criteria for a Quality Hazardous Waste Program; EPA’s Hazardous Waste Civil Enforcement Response Policy (March 1996), and any revision thereto; and the EPA Policy on Performance Based Assistance (May 31, 1985); and the May 1, 1996 Advanced Notice of Proposed Rulemaking for the Corrective Action Program; Setting Customer Service Standards (E. O. 12862, September 11, 1993); Improving Customer Service (Fred Hanson, April 8, 1998); Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations (E. O. 12892, February 11, 1994); EPA OSWER Environmental Justice Action Agenda (EPA 540/R-95/023, 1995).

administration of the State Program. While EPA retains responsibility for the direct implementation of those provisions of HSWA for which the State is not authorized, EPA and the State intend to coordinate the implementation of these provisions to the greatest degree possible.

Section 3006(g) of RCRA provides that hazardous waste requirements and prohibitions promulgated pursuant to HSWA are applicable in authorized States at the same time that they are applicable in unauthorized States with the exception of section 3006(f), “Availability of Information,” which cannot be implemented by EPA in authorized States. If such HSWA requirements are less stringent than the State’s authorized program, the State’s rules would govern.

EPA will execute its required oversight functions of the authorized State Program to ensure full execution of the requirements of RCRA, to promote national consistency in the implementation of the hazardous waste program, to allow EPA to report to the President and Congress on the achievements of the hazardous waste program, and to encourage States and EPA to agree on the level of desirable technical support and joint efforts to prevent and to mitigate environmental problems associated with the improper management of hazardous wastes.

EPA will conduct oversight functions through written reporting requirements, permit overview, compliance and enforcement overview, and mid-year and annual reviews of the State’s program.

### **III. STATE PROGRAM REVIEW**

#### **A. General**

The Regional Administrator will assess the State’s administration and enforcement of the hazardous waste program on a continuing basis for equivalence and consistency with RCRA, with this MOA, and with all applicable Federal requirements and policies for the adequacy of enforcement. EPA will assess the State’s administration and enforcement by reviewing information the State submits in accordance with this MOA, the State’s RCRA §3011 Grant Work Plan (hereinafter “Grant Work Plan”), and through periodic reviews of the State’s program activities. EPA may also employ other mechanisms to aid in its assessment of the State’s program.

To ensure effective program review, the State agrees to allow EPA access to all records used in the administration of the program requested by the Regional Administrator, or his/her designee, which are deemed necessary by EPA to review and evaluate the State Program and enforcement. The State does not waive any privileges it may assert in litigation under the Federal Rules of Civil Procedure.

Review of the State’s files may be scheduled periodically; however, the State agrees to allow EPA access to specific files more frequently as circumstances warrant, i.e., for enforcement actions. Program review meetings between the Director and the Regional Administrator, or their designees, will be

scheduled at reasonable intervals not less than annually to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns. These meetings will be scheduled at least fifteen (15) days in advance unless EPA and the State agree to a different length of time. A tentative agenda for the meeting will be prepared in advance by EPA.

The Regional Administrator may also consider, as part of his regular assessment, written comments about the State's program administration and enforcement that are received from regulated persons, the public, and Federal, State and local agencies.

## **B. Identification of Priority Activities**

The State and EPA agree to develop, as a part of the State's Grant Work Plan, criteria for priority activities, including activities regarding handlers of hazardous waste. These criteria will be based on EPA program guidance, the Office of Enforcement and Compliance Assurance (OECA) MOA, and priorities of the State and will be used to identify activities that should receive the highest priority during the grant period. They will be reviewed annually and revised as appropriate.

Activities that could be considered high priority include, but are not limited to, facilities to be inspected or permitted, facilities requiring corrective action, and enforcement against owners or operators of facilities with known or suspected contamination that pose a risk to human health or the environment.

## **IV. INFORMATION SHARING**

### **A. General**

This section covers information sharing on miscellaneous elements of the RCRA program, including notification, RCRAInfo data, etc. Specific information-sharing requirements for the other major program elements are covered in Sections V (Permit Issuance), VI (Permit Administration), and VIII (Compliance Monitoring and Enforcement).

As the respective information needs of the State and EPA evolve, changes to this section of the MOA may be appropriate. During the annual review of this MOA, the Director and the Regional Administrator will carefully examine the following information-sharing provisions and revise as appropriate.

EPA and State responsibilities regarding the maintenance and operation of the Resource Conservation and Recovery Information (RCRAInfo) System are specified in the RCRAInfo Memorandum of Understanding (MOU) negotiated between EPA Region III and the State and in the Grant Work Plan. Examples of responsibilities addressed in the RCRAInfo MOU include, but are not limited to, the

following:

1. processing hazardous waste notification forms;
2. issuing EPA identification numbers;
3. submittal and use of compliance and enforcement information;
4. submittal and use of corrective action information;
5. processing hazardous waste permitting information; and
6. submittal of information to correct information which is inaccurate.

**B. EPA**

Consistent with applicable law and regulations, EPA will:

1. keep the State informed in a timely manner of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and other factors that affect the State's Program. EPA will also provide timely technical guidance to the State. EPA will share with the State any national reports EPA develops from the data submitted through State reporting requirements;
2. make available to the State, as requested, other relevant information which the State needs to implement its approved program, subject to the conditions of 40 CFR Part 2, such as:
  - a. Part A and Part B Permit Applications, whether received prior to the effective date of this MOA, or subsequent to the effective date of this MOA, and whether first received by the State or EPA,
  - b. copies of final permits and permit modifications,
  - c. notices of permit denials, and
  - d. other information necessary to support the foregoing information; and
3. bring to the State's attention any comments it receives regarding the State's

administration of the hazardous waste program.

As resources and circumstances allow, EPA will make available necessary training relating to RCRA Subtitle C to the State on request.

As resources allow, EPA agrees to provide technical assistance to the State in the review of permit applications, draft permits, permit modifications, closure/post-closure plans, etc., on request.

### **C. State**

The State agrees to inform the Regional Administrator in advance of any proposed program changes that would affect the State's implementation of the authorized program. Program changes of concern include modifications of the State's legal authorities (*i.e.*, statutes, regulations, and judicial or legislative actions affecting those authorities), modifications of Memoranda of Agreement or Understanding with other agencies, and modifications of resource levels that would have a negative impact on the State's ability to carry out the terms of this MOA (*i.e.*, available or budgeted personnel and funds). The State recognizes that program revisions must be made in accordance with the provisions of 40 CFR 271.21, and that, until approved by EPA, revisions are not authorized as RCRA Subtitle C requirements.

EPA and the State will agree on the type and frequency of reports which the State will prepare for EPA to maintain oversight of the implementation of the State's authorized program. A specific list of reports and their frequency will be included in the Grant Work Plan and will constitute a grant commitment for the State. Reporting will include, but not be limited to, the following:

1. Government Performance and Results Act ("GPRA") goals and accomplishments;
2. Information required pursuant to 40 CFR 270.5;
3. Biennial report summarizing the quantities and types of hazardous waste generated, transported, treated, stored, and disposed of in the State by October 1 of each even-numbered year;
4. To the extent requested by USEPA, copies of inspection reports, record reviews, and sampling results for all commercial facilities, treatment, storage, and disposal facilities (TSDFs), large quantity generators (LQGs), Federal facilities and non-notifiers. For small quantity generators (SQGs), the above reports need only be submitted where there are detected violations;
5. Copies of all enforcement actions, orders and judgments regarding commercial facilities, non-notifiers, TSDFs, Federal facilities, generators and SQGs; and

6. At a frequency to be determined by USEPA, but not more often than quarterly, reports containing statistical summaries and charts of the accomplishments for compliance and enforcement. Where appropriate, facility information should be listed by category (e.g., generators, TSDFs, etc) and include EPA ID numbers.

Pursuant to 40 CFR 271.8, EPA reserves the right to request any information it deems necessary relating to the State's approved program in a manner to be specified in the Grant Work Plan.

The State agrees to provide permit and closure information to EPA as specified in the Grant Work Plan. A listing of the information which the State will submit to EPA and a submittal schedule will be included in the Grant Work Plan and will constitute a grant commitment for the State. Examples of the required information include, but are not limited to, the following:

1. Copies of permit applications submitted to the State and subsequent revisions or additions to these applications on or after the effective date of this MOA, for hazardous waste management facilities in the State, unless EPA has been sent a copy by the facility;
2. Copies of draft permits, proposed permit modifications, draft permit denials, and accompanying explanatory material for all hazardous waste management facilities in the State. EPA also may request copies of completeness and technical reviews for selected permits being worked on during the fiscal year;
3. Copies of all final permits issued, denied, modified, reissued or terminated;
4. The following closure/post-closure data:
  - a. Copies of the public notices announcing receipt of closure/post-closure plans and public hearings, if applicable;
  - b. Copies of the approved closure and post-closure plans for all facilities;
  - c. Copies of the closure certifications for facilities signed by an independent registered professional engineer (or an independent qualified soil scientist in cases of land treatment facilities) and the owner or operator;
  - d. Copies of the State's reports of inspections conducted during closure and after receipt of closure certification; and

- e. Copies of any notice placed in the property deed, or other instrument that is normally examined during a title search, annotating the existence of any closed disposal facility/unit or cell.

The State may request technical assistance in the review of permit applications, draft permits, permit modifications, closure/post-closure plans, variances, waivers, etc. EPA will honor these requests as resources allow. The priorities for permitting will be reviewed annually.

Upon EPA's request, the State agrees to provide EPA with copies of reports or data resulting from any compliance inspection and subsequent enforcement actions.

The State agrees to send EPA a copy of each State decision granting any waiver or variance, within the scope of the authorized program, at the time such request is granted.

The State agrees to provide any pertinent information requested by the Regional Administrator or his designee within a mutually agreed upon time frame for EPA to carry out its oversight responsibilities. Unless otherwise specified, the above information will be sent to:

U.S. Environmental Protection Agency  
Region III  
Virginia Program Manager, 3WC21  
1650 Arch Street  
Philadelphia, PA 19103-2029

In accordance with the provisions of 40 CFR 271.14 and 124.108 the State agrees to develop and maintain a public mailing list and have it readily available for EPA before public notice of an action by the State regarding a facility. An acceptable list may be specific to certain facilities, areas, or concerns; or the list may be a general State-wide list used in all cases. This list should be kept current and accurate.

#### **D. Obtaining and Sharing Information for National Data**

EPA is responsible for maintaining reliable national data on hazardous waste management. These data are used to report to the President and Congress on the achievements of the hazardous waste program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain such data, EPA will first seek to gain them from the State, which agrees to supply this information to the Regional Administrator if readily available and as resources allow. If the State is unable to provide the information or if it is necessary to supplement the State information, EPA may conduct a special survey or perform information collection site visits after notifying the State. EPA will share with the State any national reports developed by EPA as a result of such information collection.

## **E. Emergency Situations**

Upon receipt of any information that the handling, storage, treatment, transportation, or disposal of hazardous waste is endangering human health or the environment, the Party in receipt of this information will immediately notify the other Party to this MOA by telephone of the situation.

1. For the State, during office hours, Department of Environmental Quality (DEQ) Central Office, 804-698-4000 [TDD 804-698-4021; FAX 804-698-4500] or 1-800-592-5482, after hours emergencies contact the DEQ regional office or the Department of Emergency Management (DEM), 1-800-468-8892. DEQ offices and DEM offices are listed in the blue page local listing section of the telephone directory.
2. For the EPA, the twenty-four (24) hour response number is (215) 814-9016.

## **F. Confidentiality**

The State agrees to give EPA access to all records used in the administration of the program requested by the Regional Administrator which are deemed necessary by EPA to review and evaluate the State Program and enforcement. The Commonwealth does not waive any privileges it may assert in litigation under the Federal Rules of Civil Procedure.

EPA agrees to furnish to the State information in its files that is not submitted under a claim of business confidentiality and which the State needs to implement its program. Subject to the conditions in 40 CFR part 2, EPA will furnish the State information submitted to EPA under a claim of business confidentiality which the State needs to implement its program. All information EPA agrees to transfer to the State will be transferred in accordance with the requirements of 40 CFR part 2.

## **V. PERMIT ISSUANCE**

### **A. EPA Permitting**

Upon authorization of the State Program, EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities for which the State is receiving authorization. If EPA promulgates standards for additional regulations mandated by HSWA that are not covered by the State's authorized program, EPA will issue and enforce RCRA permits in the State for these new regulations until the State receives final authorization for equivalent State standards.

As the State receives authorization for additional provisions of HSWA, EPA will suspend issuance of Federal permits in the State for those provisions. If EPA promulgates new standards requiring a permit

modification, EPA may, pursuant to 40 CFR 270.42(b)(6)(vii), extend the time period for final approval or denial of a modification request until such time that the State receives authorization for the new standards.

EPA will transfer any pending permit applications, completed permits or pertinent file information to the State within thirty (30) days of the approval of the State Program or other mutually agreed upon schedule in conformance with the conditions of this MOA.

## **B. State Permitting**

The State is responsible for expeditiously drafting, circulating for public review and comment, issuing, modifying, reissuing and terminating RCRA permits for those hazardous waste treatment, storage, and disposal facilities subject to the authorized provisions of the State's program. The State will do so in a manner consistent with RCRA, as amended by HSWA, this MOA, all applicable Federal requirements, the State's Program Description, the Grant Work Plan, and other State requirements. The State commits to meet the 2005 GPRA RCRA permitting goal, which requires that at least 90% of existing hazardous waste management facilities have approved controls in place to prevent dangerous releases to air, soil and groundwater.

The State's permitting process will conform to 9 VAC 20-60-124 and 9 VAC 20-60-270, which are analogous to 40 CFR parts 124 and 270.

The State agrees to issue, modify or reissue all permits contained in the authorized portions of the State's program in accordance with 9 VAC 20-60-270, which is analogous to 40 CFR part 270, and to include as permit conditions all applicable provisions of 9 VAC 20-60-264, which is analogous to 40 CFR part 264. This MOA also applies to permits issued after final authorization, but for which the processing may have begun before final authorization.

In permits issued pursuant to the State's authorized program, the Department will ensure that compliance tasks are described in clear, unambiguous and plain language to the extent practicable. The compliance tasks should be clear, measurable and definable thereby lending themselves to greater enforceability. For example: "Conduct periodic inspections" should be replaced with "Inspect on a daily/weekly/biweekly/monthly basis. A log book documenting inspections will be maintained at the facility for a period of 3 years."

The State agrees that any compliance schedule contained in permits it issues will require compliance with applicable standards as soon as possible.

The State agrees to consider all comments that EPA makes on permit applications and draft permits before issuing the permit or making the modification. The State will satisfy or refute in writing any EPA

written comments on a particular permit application, proposed permit modification, or draft permit before issuing the permit or making the modification. In addition, the State agrees not to issue a permit or approve a modification in dispute until the Regional Administrator and the Director have exercised the dispute process in Section V. C. below.

The State agrees that no permit will be issued unless the public notice requirements are met, in accordance with 9 VAC 20-60-124.

The State agrees to submit to EPA no less than forty-five (45) days prior to public notice those draft permits or proposed permit modifications identified for oversight in the Grant Work Plan.

The State agrees to submit copies of all final permits to EPA within ten (10) days of issuance.

### **3. EPA Review of State Permits**

In accordance with 40 CFR 271.19, EPA may comment on any draft permit or proposed permit modification, whether or not EPA commented on the permit application. EPA may review file information at State offices or request a copy of any permit application, draft permit or proposed permit modification, statement of basis or fact sheet, and any supporting documentation that was considered in the development of any draft permit. The State will provide this information to EPA within seven (7) days of EPA's request.

While EPA may comment on any permit application, draft permit, or proposed permit modification, EPA will focus primarily on those facilities identified by the State or EPA in the Grant Work Plan or types of facilities identified as a priority in EPA national Guidance.

EPA will notify the State of its intent to comment on a State draft permit or proposed permit modification within thirty (30) days of receipt. EPA will comment within forty-five (45) days of receipt or will request an extension to submit those comments as warranted. Where EPA indicates in a comment that issuance, modification, reissuance, termination or denial of the permit would be inconsistent with the approved State Program, EPA will include in the comment:

1. A statement of the reasons for the comment (including the section of the State law or regulations that support the comment), and
2. The actions that should be taken by the State to address the comments (including the conditions which the permit would include if it were issued by EPA.)

Generally, EPA and the State will attempt to resolve all EPA comments on an informal basis before a final action is taken by the State. If this is not successful, EPA will submit written comments to the State

in accordance with 40 CFR 271.19, and send a copy of those comments to the permit applicant. The State agrees not to proceed with a final action until it receives EPA's written comments and resolves EPA's comments as described below:

1. The State and EPA will attempt to reach agreement on permit conditions in dispute before the State issues a draft permit or approves proposed permit modifications to an existing permit.
2. Whenever there is a disagreement between their staffs on the terms of any RCRA permit to be issued by the State, the Director and the Regional Administrator, or their designees, agree to confer in a timely manner to resolve such disagreement. Unless otherwise agreed to, the Director and the Regional Administrator, or their designees, will work toward resolving all issues within thirty (30) days of their first involvement in the issues.
3. EPA will withdraw its comments in writing if satisfied that the State has met or refuted its concerns in writing and will provide the permit applicant with a copy of such withdrawal.
4. If the Director and the Regional Administrator are unable to resolve any issue for which EPA cannot withdraw its comment, the State will proceed to permit issuance. However, in accordance with 40 CFR 271.19, EPA may take action under §3008 of RCRA against a holder of a State-issued permit on the ground that the permittee is not complying with a condition that the Regional Administrator, in commenting on that permit application, draft permit, or proposed permit modification, stated was necessary to implement approved State Program requirements, whether or not that condition was included in the final permit.

Under §3008(a)(3) of RCRA, EPA may terminate a State-issued permit in accordance with the procedures of 40 CFR Part 124, or bring an enforcement action in the case of a violation of a State Program requirement. In exercising these authorities, EPA will observe the conditions established in 40 CFR 271.19(e), and any other applicable authorities.

#### **D. Coordinated Permitting Process**

The State and EPA agree to coordinate the issuance of permits, including joint permits, in the State for facilities subject to those provisions of HSWA for which the State does not have authorization. In accordance with §3006(c)(3) of RCRA, the State may enter into an agreement with the Administrator under which the State may assist in the administration of the requirements and prohibitions which take effect pursuant to HSWA. Details of coordinated permitting activities will be set forth in the Grant

Work Plan, and will be reviewed and revised as often as necessary, but no less often than annually to assure their continued appropriateness. Upon authorization of the State for a permit-related provision of HSWA, the details of any coordinated permitting activities set out in the Grant Work Plan will be amended to reflect the authorization.

EPA oversight of State corrective action decisions will be performed in accordance with work sharing responsibilities established in the Grant Work Plan, as resources allow. The State agrees to work cooperatively with EPA in achieving EPA's 2005 GPRA goals for corrective action environmental indicators, details of which will be established in the Grant Work Plan. The State will submit to EPA copies of draft corrective action decision documents (*e.g.*, approvals of reports and work plans, disapproval comment letters, permit modifications, permits and orders, statements of basis for proposed remedy and final remedy decisions) within seven (7) days of EPA's request. The State will consider and respond to EPA's comments on final corrective action decisions and will submit copies of all final corrective action decision documents to EPA within seven (7) days of issuance.

The State will conduct the RCRA-authorized Corrective Action Program in a manner consistent with applicable EPA guidance and in a manner that promotes rapid achievement of cleanups, while protecting human health and the environment. Specifically, the State will, to the extent practicable:

1. adopt flexible, practical, results-based approaches that focus on short-term control of human exposure and migration of contaminated groundwater, with the long-term goal being final cleanup;
2. provide ready public access to information and meaningful opportunities for public involvement in the cleanup process; and
3. foster innovation, creativity, communication and technical expertise, focusing on accelerating cleanups and meeting program goals.

EPA will assist the State with all aspects of the RCRA cleanup program and support its efforts to conduct faster, focused and more flexible RCRA cleanups.

## **VI. PERMIT ADMINISTRATION**

### **A. EPA**

EPA will administer, pursuant to 40 CFR parts 124 and 270, the RCRA permits or portions of permits it has issued for facilities in the State until they expire or are terminated. EPA will be responsible for enforcing the terms and conditions of the Federal portions of the permits while they remain in force. Prior to authorization of additional authorities, EPA and the State may establish interim agreements that

will allow State work sharing activities. When the State either incorporates the terms and conditions of the Federal permits in State RCRA permits, or issues State RCRA permits to those facilities, EPA will terminate those permits pursuant to 40 CFR parts 124 and 270.

## **B. State**

The State agrees to review all hazardous waste permits that were issued under State law before the appropriate effective date of authorization in accordance with 40 CFR 271.13(d) and to modify, or revoke and reissue, those permits as necessary to require compliance with the authorized State Program.

The State will notify EPA of any permits not equivalent to Federal permit requirements, including any permits that have been issued but are pending administrative or judicial appeal. Except for these non-equivalent permits, once EPA has determined that the State has fulfilled the requirements of 40 CFR 271.13(d), EPA will terminate the applicable Federal permit, or Federal portion of the permit, pursuant to the procedures in 40 CFR 124.5(d), notify the State that the permit is terminated, and no longer administer those permits or portions of permits for which the State is authorized.

The State agrees to resolve all State permit appeals in a manner consistent with its authorized RCRA program, and the Virginia Administrative Process Act §§2.2-4000 through -4033 of the Virginia Code.

## **C. Corrective Action Transition**

Pursuant to its authorized program, the State will be responsible for the issuance and enforcement of any new corrective action permits. EPA will continue to administer and enforce corrective action permits it has issued until they expire or they are terminated by EPA because the State has modified or issued a permit that is not less stringent than EPA's corrective action permit. Administration of the corrective action facility universe will be divided between EPA and the State in a manner consistent with the mutually agreed upon Corrective Action Transition Strategy and the Grant Work Plan. The Grant Work Plan will revise the division of the facility universe as necessary and detail the work to be performed on permit issuance and corrective action work sharing activities. The State agrees to work cooperatively with EPA to meet EPA's share of the 2005 GPRA goals for Corrective Action Environmental Indicators, the details of which will be established in the Grant Work Plan.

Since the enactment of HSWA, EPA has managed all RCRA corrective action activities in the State. Immediately after authorization of the State's corrective action program on September 29, 2000, EPA began the transfer of RCRA corrective action permit responsibilities and workload to the State. EPA will continue to work with the State to determine when and how best to accomplish this task to minimize disruption of ongoing corrective action work and to achieve the best possible program outcomes. When making these determinations, EPA and the State will consider the following factors:

1. EPA's continued authority to administer EPA-issued corrective action permits after authorization,
2. EPA's investment in and knowledge of ongoing corrective action permit activities at RCRA facilities in the State,
3. the need to attain national corrective action program goals established under the GPRA,
4. available resources,
5. skill and experience in the State's base program and corrective action program, and
6. the existence of EPA corrective action authorities beyond those related to permits (e.g., RCRA §3008(h)).

For example, major decision points reached in the administration of an EPA permit (e.g., remedy selection) might cause EPA to consider transferring lead permit responsibility to the State for the next phase of corrective action.

Both Parties agree to continue to communicate and coordinate their respective corrective action activities at RCRA facilities. Where either Party can offer management, programmatic or technical assistance to assist the other in meeting site-specific objectives or mutual program goals, such support will be provided to the extent resources and competing priorities allow. To the degree possible, specific plans and expectations to coordinate respective corrective action activities will be negotiated in RCRA Grant Work Plans.

Site-specific corrective action work sharing activities will be defined in the State's Grant Work Plan.

Once high priority RCRA sites are permitted or otherwise addressed and it is determined that GPRA goals will be achieved, facilities with medium and low priorities will be addressed.

EPA's authorization of the State's corrective action program, and provisions of this MOA, relate to corrective action permitting responsibilities under RCRA §3004(u) and (v).

## 7. VARIANCES, WAIVERS, AND DELISTING

In the event circumstances arise which warrant such action, the State may exercise the variance authorities established in §10.1-1400 et seq. of the Code of Virginia and 9 VAC 20-60-1370 through 9 VAC 20-60-1435. The State agrees to provide EPA with a copy of each State decision (regarding waivers, variances and delisting petitions, etc. as provided in the State Program at the time such requests

are granted. The State agrees that it will not exercise its variance authority, including emergency administrative orders, unless the result will be at least as stringent as, and consistent with the Federal program, and consistent with the other State Programs. The State agrees that no variance will be granted unless the applicable public notice requirements are met, including those of 9 VAC 20-60-124 B.9, and publication in the Virginia Register.

EPA will continue to process delisting petitions; however, EPA agrees to include the State in all pre-petition discussions with petitioners, and EPA will notify the State within 7 days of receiving an official petition to delist a waste from a specific facility in the State, pursuant to 40 CFR 260.22. The Director, or his designee, will inform EPA in writing of the State's intent to participate in EPA's review and evaluation of the delisting petition. Delisting petitioners in the State will submit delisting petitions to the Regional Administrator and to the Director. In the event that these petitions are submitted to the State in lieu of EPA, the State will retain a copy and immediately forward the petition to EPA. When a petition is submitted to EPA, EPA will notify the petitioner of the need to submit a copy of the petition to the State. Should EPA require the assistance of the State in the review of the petition, this work sharing activity will be negotiated at the time the annual Grant Work Plan is being negotiated, or subsequently as an additional element to be added to or substituted into the work plan.

EPA will notify the State prior to publishing a proposed delisting determination in the Federal Register, and again notify the State when the final determination is made. A copy of the Federal Register Notice announcing EPA's tentative determination will be provided to the State. EPA will notify the State if any public comments are received on EPA's tentative determination and provide copies if requested. As necessary, and if requested, EPA agrees to coordinate with the State in the development of any response to comments. A copy of EPA's final determination on the petition, as published in the Federal Register, will be provided to the State. If the State concurs with an affirmative EPA decision on a delisting petition, the Director agrees to follow appropriate state procedures to officially incorporate EPA's rulemaking decision into the State's program. When EPA approves a delisting petition after the appropriate public comment period, the State will notify the facility that it must petition the State for a variance from the definition of hazardous waste. The State will review and reach a case decision on the variance requests in accordance with the Virginia Administrative Process Act so that the State can recognize EPA's approved exclusion until such time as the State is able to propose incorporation of the exclusion into its regulations during the next State rulemaking opportunity. The State will inform the Regional Administrator when the final action has been completed in accordance with the Virginia Administrative Process Act.

## **VIII. COMPLIANCE MONITORING AND ENFORCEMENT**

Both EPA and the State are committed to maintaining a level playing field and establishing a credible deterrence to noncompliance throughout the regulated community. As a result, EPA and the State will work together to develop and implement a plan to coordinate compliance monitoring and enforcement activities. These activities may include but are not limited to identifying Federal and State priorities, developing and implementing inspection targeting methods, developing targeted inspection lists, exchanging information regarding ongoing Federal and State enforcement actions against significant noncompliers (SNCs) and Secondary Violators as defined in EPA's Hazardous Waste Civil Enforcement Response Policy dated March 1996, or any revisions thereto, and VDEQ's Enforcement Manual.

Enforcement and compliance monitoring activities/priorities will be outlined in the Office of Enforcement and Compliance Assurance's MOA guidance. EPA and the State will negotiate enforcement and compliance monitoring activities/priorities and describe them in the State's Grant Work Plan.

### **A. EPA**

#### **1. Compliance Monitoring**

Nothing in the MOA will restrict EPA's right to inspect any establishment or other place where hazardous wastes are or have been generated, stored, treated, transported from or disposed of, or to bring an enforcement action against any person believed to be in violation of the State or Federal hazardous waste program or to exercise its authority under §§3008(h), 3013, and/or 7003 of RCRA. Before conducting any such inspection of a regulated facility, EPA will attempt to give the State at least seven days notice of EPA's intent to inspect in accordance with 40 CFR 271.8(b)(3)(i). Based on exigent circumstances, EPA may shorten this period. The State may participate in all inspections EPA conducts. EPA will coordinate oversight and training inspections with the State.

In an effort to improve enforcement coordination and clarify roles and responsibilities between EPA and the State, the lead agency of an inspection will routinely be the lead in any enforcement action to address RCRA violations discovered during the inspection. However, it is recognized that it may be more appropriate in some cases to defer enforcement action to the other agency. Discussion and mutual agreement will be sought in such cases.

#### **2. Enforcement**

EPA may take enforcement action against any person determined to be in violation of RCRA in accordance with §3008 of RCRA. EPA may also take enforcement action upon determining that the State has not taken timely or appropriate enforcement in a manner consistent with EPA's Hazardous

Waste Civil Enforcement Response Policy dated March 1996, or any revision thereto. EPA reserves its right to take independent enforcement actions in the State. When the State refers an enforcement case to EPA, the Agency will review the information provided and determine the appropriate Federal action, if any. Before issuing a complaint, compliance order or referral to the Department of Justice, EPA will give notice to the State.

After notice to the State, EPA may take action pursuant to RCRA §3008, including action against the holder of a State-issued permit, on the ground that the permittee is not complying with a condition of that permit. In addition, EPA may take action under §3008 of RCRA against a holder of a State-issued permit on the ground that the permittee is not complying with a condition that the Regional Administrator, in commenting on that permit application or draft permit, stated was necessary to implement approved State Program requirements, whether or not that condition was included in the final permit. EPA may take action under RCRA §3008 in a manner consistent with EPA's Hazardous Waste Civil Enforcement Response Policy dated March 1996 or any revisions thereto, or the EPA Region III Non-Compliance Response Policy for RCRA, Oil and EPCRA/CERCLA Section 103.

Under §3008(a)(3) of RCRA, EPA may terminate a State-issued permit in accordance with the procedures of 40 CFR part 124 or bring an enforcement action in the case of a violation of a State Program requirement. In exercising these authorities, EPA will observe the conditions established in 40 CFR 271.19(e) and any other applicable authorities.

EPA may exercise its authorities in accordance with RCRA §§3008(h), 3013, and 7003. EPA and the State will negotiate the lead agency for oversight. In the Grant Work Plan, facilities will be prioritized and oversight activities established.

## **B. State**

### **1. Compliance Monitoring**

The State agrees to carry out a timely and effective program for monitoring compliance of regulated hazardous waste facilities with applicable program requirements (see 40 CFR 271.15). As part of this program, the State will conduct compliance inspections to assess compliance with hazardous waste regulations, permit requirements, compliance schedules, and all other program requirements. State-specific activities and priorities for compliance monitoring will also be included in the Grant Work Plan.

### **2. Enforcement**

The State agrees to take timely and appropriate enforcement action and agrees to make significant noncomplier (SNC) determinations in a manner consistent with EPA's Hazardous Waste Civil Enforcement Response Policy dated March 1996, or any revisions thereto, and in accordance with

VDEQ's Enforcement Manual, against all persons in violation of hazardous waste regulations, permit requirements, compliance schedules, and all other program requirements.

The State will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public. The State agrees to retain all records for at least three years, unless there is an enforcement action pending. In that case, all records will be retained for three years after the action is resolved.

#### IX. EFFECTIVE DATE

The Parties are executing this MOA because the State has revised its program and amended its regulations to incorporate changes to the Federal regulations through June 30, 2004. The State has initiated this Revision II of its authorization under 40 CFR 271.21 to seek approval of the amended program. This MOA will be signed by the Director and the Regional Administrator and will become effective at the time the State's authorization takes effect, which will be the date set out in the Federal Register notice of the Regional Administrator's decision to grant authorization to the State.

COMMONWEALTH  
OF VIRGINIA  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION III

BY: Robert G. Bunker  
TITLE: Director

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

DATE: 5/3/05

DATE: \_\_\_\_\_

# **Virginia Administrative Code**

**September 8, 2004**

## **CHAPTER 60**

### **VIRGINIA HAZARDOUS WASTE MANAGEMENT REGULATIONS**

#### **Part I**

##### **Definitions**

##### **9VAC20-60-10. [Repealed]**

##### **9VAC20-60-12. Definitions derived from the Code of Virginia.**

A. Chapter 11.1 (§10.1-1182 et seq.) and Chapter 14 (§10.1-1400 et seq.) of Title 10.1 of the Code of Virginia define the meaning of terms as used in the text of the statutes. Terms not otherwise defined in these regulations or an incorporated reference text shall have the meaning as established in the statutes.

B. Where a term is defined in these regulations or an incorporated reference text, the term shall have no other meaning, even if it is defined differently in the Code of Virginia or another regulation of the Virginia Administrative Code. The board has authority to adopt regulations only as granted to it by the Code of Virginia, and nothing herein shall be interpreted as extending the effect or scope of a regulation beyond that authority.

##### **9VAC20-60-14. Definitions derived from incorporations of reference texts.**

A. These regulations contain the text herein and several incorporated texts from Title 40 of the Code of Federal Regulations (cited as 40 CFR followed by a part number, section number and subsection reference numbers). These incorporated texts are fully a part of these regulations; however, definitions, additions, modifications and exemptions stated in the text written herein direct how the incorporated text shall be interpreted, and they take precedence over the verbatim interpretation of the incorporated text. These incorporated texts include definitions that are fully a part of these regulations and generally applicable throughout all incorporated text and all text written herein; however, stated in the text written herein are directions as to how the incorporated text shall be interpreted, and these directions take precedence over the verbatim interpretation of the incorporated text.

B. Unless a specific direction regarding the substitution of terms is given elsewhere, the following terms, where they appear in the Code of Federal Regulations shall, for the purpose of these regulations, have the following meanings or interpretations:

1. "Director" shall supplant the "Administrator," "Assistant Administrator," "Assistant Administrator for Solid Waste and Emergency Response" and the "Regional Administrator," wherever they appear.

2. "Department of Environmental Quality" shall supplant the "United States Environmental Protection Agency," "Environmental Protection Agency," "Agency," "EPA," "EPA Headquarters," "EPA Region(s)" or "Regional Office," wherever they appear. The use of "EPA" as an adjective in "EPA Acknowledgment of Consent," "EPA document," "EPA form," "EPA identification number," "EPA number," "EPA Publication," or similar phrase shall not be supplanted with "Department of Environmental Quality" and shall remain as in the original text cited.

3. "EPA Environmental Appeals Board" or "Environmental Appeals Board" shall be supplanted with the appointed hearing officer at a formal hearing, the court of appropriate jurisdiction, or others as required by the Administrative Process Act, Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

4. "Qualified engineer" or "engineer" means a professional engineer certified to practice in the Commonwealth of Virginia.

5. "State," "authorized state," and "approved state" means the Commonwealth of Virginia.

6. "Approved program" means the Virginia regulatory program for the Virginia Hazardous Waste Management Regulations.

C. If a part of 40 CFR (as in 40 CFR Part 260) is cited, it shall mean the entire part (in this case, all of Part 260) including all subdivisions. If a section or subsection of a part of 40 CFR (as in 40 CFR 260.10) is cited, it shall mean the entire section (Section 10 of Part 260) and its subdivisions, but it does not include other sections or subsections of the same part.

D. The text of federal regulations incorporated by reference in these regulations includes dates that occurred before the effective date of the incorporation of those requirements into these regulations. Such dates shall not be construed as creating a retroactive right or obligation under the Virginia Hazardous Waste Management Regulations when that right or obligation did not exist in these regulations prior to the incorporation of the federal regulations by reference. In such cases, the effective date under Virginia Hazardous Waste Management Regulations is the earliest date the requirement was incorporated into these regulations or is as otherwise specified in these regulations. If a right or obligation existed under federal regulations based on a date in federal regulations and there is a period from the date cited in the incorporated text until the date they took effect in these regulations, nothing in these regulations shall contravene or countermand the legal application of the federal regulation for that period.

E. The text of federal regulations incorporated by reference in these regulations includes references to "RCRA," the "Resource Conservation and Recovery Act," sections of "RCRA," "Subtitle C of RCRA," the "Act," and other citations of enabling federal statutes. These statutes provide authority for actions by the United States Environmental Protection Agency, the administrator, and authorized states to regulate solid and hazardous waste management. The Virginia Waste Management Act (§10.1-1400 et seq.) of Title 10.1 of the Code of Virginia provides authority to the Virginia Waste Management Board, the director and the department analogous to many of those found in the federal statutes. See Part II (9VAC20-60-20 et seq.) of this chapter. Wherever in the incorporation by reference in these regulations of text from the Code of Federal Regulations there is a citation of authority from federal statutes, the authority

and power of the analogous or related portions of the Virginia Waste Management Act shall be considered to apply in addition to the federal statutory citation and to support enforcement of the requirement.

**9VAC20-60-17. Definitions created by these regulations.**

A. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Administrator" means the Administrator of the United States Environmental Protection Agency or his designee. See 9VAC20-60-14 B 1.

"Another regulation of the Virginia Administrative Code" means any regulation that is not in 9VAC20-60, the Virginia Hazardous Waste Management Regulations.

"Application, Part A" means that part of the application that a permit applicant shall complete to qualify for interim status under §3005(e) of RCRA or this chapter and for consideration for a permit.

"Application, Part B" means that part of the application that a permit applicant shall complete to be considered for a permit as required by 9VAC20-60-1010.

"Approved program" means a state program that has been approved by the U.S. EPA. An "approved state" is one administering an "approved program" under the hazardous waste management provisions of RCRA.

"Authorization (authorized program)" means a state hazardous waste program that has been approved under the authorities of RCRA.

"Authorized representative" means the manager, superintendent, or person of equivalent responsibility responsible for the overall operation of a facility or an operational unit (i.e., part of a facility).

"Board" means the Virginia Waste Management Board.

"Commonwealth" means the Commonwealth of Virginia.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Emergency permit" means a permit issued where an imminent and substantial endangerment to human health or the environment is determined to exist by the director.

"EPA" means the U.S. Environmental Protection Agency. See 9VAC20-60-14 B 2.

"EPA identification number" means the number assigned by EPA or the department to each hazardous waste generator, hazardous waste transporter, or hazardous waste facility.

"EPA hazardous waste number" means the number assigned by EPA to each waste listed in Subpart D of 40 CFR Part 261 and to each waste exhibiting a characteristic identified in Subpart

C of 40 CFR Part 261.

"Hazardous material" means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated under 49 CFR Parts 171 and 173.

"HSWA" means the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616).

"HSWA drip pad" means a drip pad where F032 wastes are handled.

"HSWA tank" means a tank owned or operated by a small quantity generator or an underground tank for which construction commenced after July 14, 1986, or an underground tank that cannot be entered for inspection.

"HWM" means hazardous waste management.

"Non-HSWA tank" means any tank that is not a HSWA tank.

"Non-HSWA drip pad" means a drip pad where F034 or F035 wastes are handled.

"Permit" means a control document issued by the Commonwealth pursuant to this chapter, or by the EPA administrator pursuant to applicable federal regulations. The term "permit" includes any functional equivalent such as an authorization, license, emergency permit, or permit by rule. It does not include interim status under RCRA or this chapter, nor does it include draft permits.

"Permitted hazardous waste management facility" or "permitted facility" means a hazardous waste treatment, storage, or disposal facility that has received an EPA or Commonwealth permit in accordance with the requirements of this chapter or a permit from an authorized state program.

"Qualified engineer" or "engineer" means a professional engineer certified to practice in the Commonwealth of Virginia.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC §6901 et seq.).

"Regulation" means the control, direction and governance of solid and hazardous waste activities by means of the adoption and enforcement of laws, ordinances, rules and regulations.

"Responsible individual" means an individual authorized to sign official documents for and act on behalf of a company or organization. See also "authorized representative."

"Signature" means the name of a person written with his own hand.

"These regulations" means 9VAC20-60, the Virginia Hazardous Waste Management Regulations.

"VHWMR" means 9VAC20-60, the Virginia Hazardous Waste Management Regulations.

B. Terms used in liability insurance requirements. In the liability insurance requirements, the terms "bodily injury" and "property damage" shall have the meanings given these terms by the

case law of the Virginia court system. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry.

**9VAC20-60-18. Applicability of incorporated references based on the dates on which they became effective.**

Except as noted, when a regulation of the United States Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is adopted herein and incorporated by reference, that regulation shall be as it exists and has been published as a final regulation in the Federal Register prior to July 1, 2004, with the effective date as published in the Federal Register notice or September 8, 2004, whichever is later.

**APPENDICES 1.1 to 1.2. [REPEALED]**

**Part II**

**General Information and Legislative Authority**

**9VAC20-60-20. Authority for chapter.**

A. This chapter is issued under Chapter 11.1 (§10.1-1182 et seq.) of Title 10.1 of the Code of Virginia and the Virginia Waste Management Act, Chapter 14 (§10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

B. Section 10.1-1402 of the Code of Virginia assigns the Virginia Waste Management Board the responsibility for carrying out the purposes and provisions of the chapter and compatible provisions of federal acts.

**9VAC20-60-30. Purpose of chapter.**

A. The purpose of this chapter is to provide for the control of all hazardous wastes that are generated within, or transported to, the Commonwealth for the purposes of storage, treatment, or disposal or for the purposes of resource conservation or recovery.

B. This chapter establishes a management control system that assures the safe and acceptable management of a hazardous waste from the moment of its generation through each step of management until the ultimate destruction or disposal.

C. This chapter is promulgated to meet the requirements of the Commonwealth legislative authority referenced in 9VAC20-60-20 A and will provide for a state hazardous waste program that will meet the requirements of RCRA.

**9VAC20-60-40. Administration of chapter.**

A. The director is designated by the Act with the responsibility to carry out programs, consistent with board approval, that will comply with the requirements of the Act.

B. The board, acting on the advice of the director, will promulgate regulations to meet the

requirements of the Act.

**9VAC20-60-50. Application of chapter.**

A. This chapter applies to any person that generates, transports, stores, treats, or disposes of a hazardous waste.

B. All persons who notify the U.S. Environmental Protection Agency under the authorities of §3010 of RCRA are subject to the provisions of this chapter.

C. All persons who did not notify the U.S. Environmental Protection Agency under the authorities of §3010 of RCRA, but that generate, transport, store, treat, or dispose of a hazardous waste shall also comply with the provisions of this chapter.

**9VAC20-60-60. [Repealed]**

**9VAC20-60-70. Public participation.**

A. All regulations developed under the provisions of Title 10.1 of the Code of Virginia for hazardous waste management shall be developed in accordance with the provisions of the Commonwealth of Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) and the Virginia Waste Management Board Public Participation Guidelines, 9VAC20-10.

B. Modifications and revisions to all hazardous waste management facility permits, except changes to interim status, shall be subject to public participation in accordance with 9VAC20-60-270.

C. Modifications and revisions to this chapter shall be the subject of public participation as specified by the Virginia Administrative Process Act and the public participation guidelines of the board.

D. Dockets of all permitting actions, enforcement actions, and administrative actions relative to this chapter shall be available to the public for review, consistent with the Commonwealth of Virginia Administrative Process Act, Virginia Freedom of Information Act (§2.2-3700 et seq. of the Code of Virginia), and the provisions of this chapter.

E. All reports and related materials received from hazardous waste generators, transporters and facilities, as required by this chapter, shall be open to the public for review.

F. Public participation in the compliance evaluation and enforcement programs is encouraged. The department will:

1. Investigate and provide written responses to all citizen complaints addressed to the department;
2. Not oppose intervention by any citizen in a suit brought before a court by the department as a result of the enforcement action; and
3. Publish a notice in major daily or weekly newspaper of general circulation in the area and provide at least 30 days of public comment on proposed settlements of civil enforcement actions

except where the settlement requires some immediate action.

**9VAC20-60-80. Enforcement and appeal procedures; offenses and penalties.**

A. All administrative enforcement and appeals taken from actions of the director relative to the provisions of this chapter shall be governed by the Virginia Administrative Process Act.

B. Sections 10.1-1455 through 10.1-1457 of the Code of Virginia provide for penalties, enforcement and judicial review. These sections describe the right of entry for inspections, the issuance of orders, penalties, injunctions, and other provisions and procedures for enforcement of these regulations.

**9VAC20-60-90. [Reserved]**

**9VAC20-60-100 to 9VAC20-60-120. [Repealed]**

**Part III**

**Incorporation of Federal Regulations by Reference**

**9VAC20-60-124. Adoption of 40 CFR Part 124 by reference.**

A. Except as otherwise provided, those regulations of the United States Environmental Protection Agency set forth in Subparts A and B of 40 CFR Part 124, wherein they relate to RCRA programs, are hereby incorporated as part of the VHWMR. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of incorporated sections of 40 CFR Part 124 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where text from 40 CFR Part 124 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Other sections of these regulations, particularly in 9VAC20-60-270 and Part XIV (9VAC20-60-1370 et seq.) of this chapter, describe processes or procedures wherein items from 40 CFR Part 124 are applied as a part of more complete and detailed requirements. The incorporations of portions of 40 CFR Part 124 in this part shall not be construed so as to contradict or interfere with the operations of other parts of these regulations.
2. In addition to the citations in 40 CFR 124.5(a), permits may be modified, revoked and reissued, or terminated for reasons stated in 9VAC20-60-270 B and Part XIV (9VAC20-60-1370 et seq.) of this chapter.
3. Text of 40 CFR 124.5(b) is not incorporated into these regulations. Administrative appeal shall be conducted in accordance the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).
4. In 40 CFR 124.5(d), 40 CFR 124.6(e), and 40 CFR 124.10(b), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

5. In 40 CFR 124.5(d), 40 CFR 124.6(e), and 40 CFR 124.10(b), the term "EPA" shall mean the United States Environmental Protection Agency.

6. In 40 CFR 124.10(c)(1)(ii), the term "EPA" shall mean the United States Environmental Protection Agency.

7. In 40 CFR 124.10 procedures are described for giving public notice in newspapers and radio broadcast when a draft permit has been prepared (40 CFR 124.10(a)(1)(ii)) or when a public hearing will be held on the draft permit (40 CFR 124.10(b)(2)). The applicant for a permit shall arrange for the newspaper publication and radio broadcast and bear the cost of the publication and broadcast. The department shall send notification to the applicant that the publication and broadcast are required and the notification shall include the text of the notice, dates of publication and broadcast, and acceptable newspapers and radio stations wherein the notice may be published. The department may arrange for the newspaper publication and radio broadcast and require the applicant to remit the cost of such publication and broadcast.

8. In 40 CFR 124.19 an appeal process is established that includes certain appeals procedures that apply to the federal hazardous waste program, including the establishment of an EPA Environmental Appeals Board. These Virginia regulations do not incorporate this federal process. Appeals under these regulations will be in accordance with the Administrative Process Act, Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia. All federal regulatory references to the appeal process or the EPA Environmental Appeals Board, such as in 40 CFR 124.5, shall be construed to mean the administrative processes and appeals processes as specified by Virginia's Administrative Process Act.

9. The petitioner for a variance from any regulation shall arrange for any newspaper publication and radio broadcast required under this chapter and to bear the cost of such publication and broadcast. The department shall send notification to the applicant that the publication and broadcast are required and the notification shall include the text of the notice, dates of publication and broadcast, and acceptable newspapers and radio stations wherein the notice may be published. The department may arrange for the newspaper publication and radio broadcast and require the applicant to remit the cost of such publication and broadcast.

**9VAC20-60-130 to 9VAC20-60-220. [Repealed]**

**APPENDICES 3.1 to 3.8. [REPEALED]**

**9VAC20-60-230 to 9VAC20-60-250. [Repealed]**

**9VAC20-60-260. Adoption of 40 CFR Part 260 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 260 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 260 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 260 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the

purpose of its incorporation into these regulations:

1. In 40 CFR 260.10, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

2. In 40 CFR 260.10, the term "EPA" shall mean the United States Environmental Protection Agency.

3. In 40 CFR 260.10 the term "new tank system" and "existing tank system," the reference to July 14, 1986, applies only to tank regulations promulgated pursuant to federal Hazardous and Solid Waste Amendment (HSWA) requirements. HSWA requirement categories include:

a. Interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators;

b. Leak detection requirements for all underground tank systems for which construction commenced after July 14, 1986; and

c. Permitting standards for underground tanks that cannot be entered for inspection.

For non-HSWA regulations, the reference date shall be January 1, 1998.

4. In 40 CFR 260.10, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

5. In 40 CFR 260.10 definitions of the terms "Person," "State," and "United States," the term "state" shall have the meaning originally intended by the Code of Federal Regulations and not be supplanted by "Commonwealth of Virginia."

6. In 40 CFR 260.10 and wherever elsewhere in Title 40 of the Code of Federal Regulations the term "universal waste" appears, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

7. Throughout 40 CFR 260.11(a), the terms "EPA" and "U.S. Environmental Protection Agency" shall not be supplanted with the term "Commonwealth of Virginia."

8. In Part XIV (9VAC20-60-1370 et seq.), the Virginia Hazardous Waste Management Regulations contain provisions analogous to 40 CFR 260.30, 40 CFR 260.31, 40 CFR 260.32, 40 CFR 260.33, 40 CFR 260.40, and 40 CFR 260.41. These sections of 40 CFR Part 260 are not incorporated by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

9. Sections 40 CFR 260.2, 40 CFR 260.20, 40 CFR 260.21, 40 CFR 260.22 and 40 CFR 260.23 are not included in the incorporation of 40 CFR Part 260 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

10. Appendix I to 40 CFR Part 260 is not incorporated by reference and is not a part of the

Virginia Hazardous Waste Management Regulations.

**9VAC20-60-261. Adoption of 40 CFR Part 261 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 261 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 261 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 261 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Any agreements required by 40 CFR 261.4(b)(11)(ii) shall be sent to the United States Environmental Protection Agency at the address shown and to the Department of Environmental Quality, Post Office Box 10009, Richmond, Virginia 23240-0009.
2. In 40 CFR 261.4(e)(3)(iii), the text "in the Region where the sample is collected" shall be deleted.
3. In 40 CFR 261.4(f)(1), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.
4. In 40 CFR 261.6(a)(2), recyclable materials shall be subject to the requirements of 9VAC20-60-270 and Part XII (9VAC20-60-1260 et seq.) of this chapter.
5. No hazardous waste from a conditionally exempt small quantity generator shall be managed as described in 40 CFR 261.5(g)(3)(iv) or 40 CFR 261.5(g)(3)(v) unless such waste management is in full compliance with all requirements of the Solid Waste Management Regulations (9VAC20-80).
6. In 40 CFR 261.9 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."
7. In Subparts B and D of 40 CFR Part 261, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency, and the term "Director" shall not supplant "Administrator" throughout Subparts B and D.

**9VAC20-60-262. Adoption of 40 CFR Part 262 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 262 are hereby incorporated as part of the Virginia Hazardous

Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 262 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 262 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 262.42(a)(2), the words "for the Region in which the generator is located" is deleted from the incorporated text and is not a part of these regulations.

2. In 40 CFR 262.12, 40 CFR 262.53, 40 CFR 262.54, 40 CFR 262.55, 40 CFR 262.56 and 40 CFR 262.57, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

3. In 40 CFR 262.12, 40 CFR 262.53, 40 CFR 262.54, 40 CFR 262.55, 40 CFR 262.56 and 40 CFR 262.57, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. For accumulation areas established before March 1, 1988, a generator who is not otherwise exempted by 40 CFR 261.5 shall notify the department of each location where he accumulates hazardous waste in accordance with 40 CFR 262.34 by March 1, 1988. For accumulation areas established after March 1, 1988, he shall notify the department and document in the operating record that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34 prior to or immediately upon the establishment of each accumulation area. In the case of a new generator who creates such accumulation areas after March 1, 1988, he shall notify the department at the time the generator files the Notification of Hazardous Waste Activity that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34. This notification shall specify the exact location of the accumulation area at the site.

5. In addition to the requirements in 40 CFR Part 262, management of hazardous wastes is required to comply with the Regulations Governing the Transportation of Hazardous Materials (9VAC20-110), including packaging and labeling for transport.

6. A generator shall not offer his hazardous waste to a transporter or to a facility that has not received a permit and an EPA identification number.

7. In 40 CFR Part 262, Subpart H, the terms "EPA" and "Environmental Protection Agency" shall mean the United States Environmental Protection Agency.

8. In addition to the requirements of this section, large quantity generators are required to pay an annual fee. The fee schedule and fee regulations are contained in Part XII (9VAC20-60-1260 through 9VAC20-60-1285) of this chapter.

#### **9VAC20-60-263. Adoption of 40 CFR Part 263 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 263 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions,

reference materials and other ancillaries that are a part of 40 CFR Part 263 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 263 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Additional requirements for transportation of hazardous materials are included in Part VII (9VAC20-60-420 et seq.) of these regulations and in the Regulations Governing the Transportation of Hazardous Materials (9VAC20-110-10 et seq.).
2. Sections of 40 CFR 263.21(a)(2), 40 CFR 263.30 and 40 CFR 263.31 are not incorporated by reference and are not a part of the Virginia Hazardous Waste Management Regulations. See 9VAC20-60-490 for requirements related to transportation discharge management.

**9VAC20-60-264. Adoption of 40 CFR Part 264 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 264 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 264 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 264 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Sections 40 CFR 264.1(d), 40 CFR 264.1(f), 40 CFR 264.149, 40 CFR 264.150, 40 CFR 264.301(l), and Appendix VI are not included in the incorporation of 40 CFR Part 264 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.
2. In 40 CFR 264.1(g)(11) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."
3. In 40 CFR 264.12(a), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.
4. In 40 CFR 264.33, the following sentence shall be added to the end of the paragraph: "A record of tests or inspections will be maintained on a log at that facility or other reasonably accessible and convenient location."
5. In addition to the notifications required by 40 CFR 264.56(d)(2), notification shall be made to the on-scene coordinator, the National Response Center and the Virginia Department of

Emergency Management, Emergency Operations Center. In the associated report filed under 40 CFR 264.56(j), the owner or operator shall include such other information specifically requested by the director, which is reasonably necessary and relevant to the purpose of an operating record.

6. In 40 CFR 264.93, "hazardous constituents" shall include constituents identified in 40 CFR Part 264 Appendix IX in addition to those in 40 CFR Part 261 Appendix VIII.

7. The federal text at 40 CFR 264.94(a)(2) is not incorporated by reference. The following text shall be substituted for 40 CFR 264.94(a)(2): "For any of the constituents for which the USEPA has established a Maximum Contaminant Level (MCL) under the National Primary Drinking Water Regulation, 40 CFR Part 141 (regulations under the Safe Drinking Water Act), the concentration must not exceed the value of the MCL; or if the background level of the constituent is below the MCL; or."

8. The owner or operator must submit the detailed, written closure cost estimate described in 40 CFR 264.142 upon the written request of the director.

9. In 40 CFR 264.143 (b)(1), 40 CFR 264.143(c)(1), 40 CFR 264.145(b)(1), and 40 CFR 264.145(c)(1), any surety issuing surety bonds to guarantee payment or performance must be licensed pursuant to Chapter 10 (§38.2-1000 et seq.) of Title 38.2 of the Code of Virginia.

10. In 40 CFR 264.143(b), 40 CFR 264.143(c), 40 CFR 264.145(b) and 40 CFR 264.145(c), any owner or operator demonstrating financial assurance for closure or post-closure care using a surety bond shall submit with the surety bond a copy of the deed book page documenting that the power of attorney of the attorney-in-fact executing the bond has been recorded pursuant to §38.2-2416 of the Code of Virginia.

11. Where 40 CFR 264.143(c)(5) the phrase "final administrative determination pursuant to section 3008 of RCRA" appears, it shall be replaced with "final determination pursuant to Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia."

12. The following text shall be substituted for 40 CFR 264.143(d)(8): "Following a final administrative determination pursuant to Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia that the owner or operator has failed to perform final closure in accordance with the approved closure plan, the applicable regulations or other permit requirements when required to do so, the director may draw on the letter of credit."

13. The following text shall be substituted for 40 CFR 264.143(e)(1): "An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance, along with a complete copy of the insurance policy, to the department. An owner or operator of a new facility must submit the certificate of insurance along with a complete copy of the insurance policy to the department at least 60 days before the date on which the hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed pursuant to Chapter 10 (§38.2-1000 et seq.) of Title 38.2 of the Code of Virginia."

14. The following text shall be substituted for 40 CFR 264.143(f)(3)(ii), 40 CFR 264.145(f)(3)(ii) and 40 CFR 264.147(f)(3)(ii): "A copy of the owner's or operator's audited

financial statements for the latest completed fiscal year; including a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and"

15. In addition to the other requirements in 40 CFR 264.143(f)(3), 40 CFR 264.145(f)(3) and 40 CFR 264.147(f)(3), an owner or operator must submit confirmation from the rating service that the owner or operator has a current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's if the owner or operator passes the financial test with a bond rating as provided in subsection 1(ii)(A).

16. The following text shall be substituted for 40 CFR 264.143(h) and 40 CFR 264.145(h): "An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility in Virginia. Evidence of financial assurance submitted to the department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure or post-closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure or post-closure care of any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism."

17. In 40 CFR 264.144, "the owner or operator must submit a detailed, written post-closure cost estimate upon the written request of the director."

18. The following text shall be substituted for 40 CFR 264.144(b): "During the active life of the facility and the post-closure period, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 40 CFR 264.145. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the department as specified in 40 CFR 264.145(f)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in 40 CFR 264.142(b)(1) and (2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

a. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

b. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor."

19. The following text shall be substituted for 40 CFR 264.144(c): "During the active life of the facility and the post-closure period, the owner or operator must revise the post-closure cost estimate within 30 days after the director has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised

post-closure cost estimate must be adjusted for inflation as specified in 264.144(b)."

20. Where in 40 CFR 264.145(c)(5) the phrase "final administrative determination pursuant to section 3008 of RCRA" appears, it shall be replaced with "final determination pursuant to Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia."

21. The following text shall be substituted for 40 CFR 264.145(d)(9): "Following a final administrative determination pursuant to Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia that the owner or operator has failed to perform post-closure in accordance with the approved post-closure plan, the applicable regulations, or other permit requirements when required to do so, the director may draw on the letter of credit."

22. The following text shall be substituted for 40 CFR 264.145(e)(1): "An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance which confirms to the requirements of this paragraph and submitting a certificate of such insurance to the department. An owner or operator of a new facility must submit the certificate of insurance along with a complete copy of the insurance policy to the department at least 60 days before the date on which the hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed pursuant to Chapter 10 (§38.2-1000 et seq.) of Title 38.2 of the Code of Virginia."

23. In 40 CFR 264.147(a)(1)(ii), 40 CFR 264.147(b)(1)(ii), 40 CFR 264.147(g)(2), and 40 CFR 264.147(i)(4), the term "Virginia" shall not be substituted for the term "State" or "States."

24. In 40 CFR 264.191(a), the compliance date of January 12, 1988, applies only for HSWA tanks. For non-HSWA tanks, the compliance date is November 2, 1997, instead of January 12, 1997.

25. In 40 CFR 264.191(c), the reference to July 14, 1986, applies only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1987, instead of July 14, 1986.

26. In 40 CFR 264.193, the federal effective dates apply only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1997, instead of January 12, 1997.

27. A copy of all reports made in accordance with 40 CFR 264.196(d) shall be sent to the director and to the chief administrative officer of the local government of the jurisdiction in which the event occurs. The sentence in 40 CFR 264.196(d)(1), "If the release has been reported pursuant to 40 CFR Part 302, that report will satisfy this requirement." is not incorporated by reference into these regulations and is not a part of the Virginia Hazardous Waste Management Regulations.

28. The following text shall be substituted for 40 CFR 264.570(a): "The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before January 14, 1993, and those for which the owner or operator has a design and has entered into a binding financial or other agreements for construction prior to January 14, 1993. All other

drip pads are new drip pads. The requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 24, 1992. For non-HSWA drip pads, the requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those non-HSWA drip pads that are constructed after September 8, 1993, except for those constructed after September 8, 1993, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to September 8, 1993."

29. In 40 CFR 264.1030(c), the reference to 40 CFR 124.15 shall be replaced by a reference to 40 CFR 124.5.

30. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia.

31. In addition to the notices required in Subpart B and others parts of 40 CFR Part 264, the following notices are also required:

a. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source (a source located outside of the United States of America) shall notify the department and administrator in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

b. The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator of the facility is also the generator of this waste) shall inform the generator in writing that he has appropriate permits for, and will accept, the waste that the generator is shipping. The owner or operator shall keep a copy of this written notice as part of the operating record.

c. Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements contained in 9VAC20-60-264 and 9VAC20-60-270. An owner or operator's failure to notify the new owner or operator of the above requirements in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

d. Any person responsible for the release of a hazardous substance from the facility which poses an immediate or imminent threat to public health and who is required by law to notify the National Response Center shall notify the department and the chief administrative officer of the local government of the jurisdiction in which the release occurs or their designees. In cases when the released hazardous substances are hazardous wastes or hazardous waste constituents additional requirements are prescribed by Subpart D of 40 CFR Part 264.

#### **9VAC20-60-265. Adoption of 40 CFR Part 265 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 265 are hereby incorporated as part of the Virginia Hazardous

Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 265 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 265 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Sections 40 CFR 265.1(c)(4), 40 CFR 265.149 and 40 CFR 265.150 and Subpart R of 40 CFR Part 265 are not included in the incorporation of 40 CFR Part 265 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

2. In 40 CFR 265.1(c)(14) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provision of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

3. A copy of all reports and notices made in accordance with 40 CFR 265.12 shall be sent to the department, the administrator and to chief administrative officer of the local government of the jurisdiction in which the event occurs.

4. In 40 CFR 265.12(a), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

5. In 40 CFR 265.33, the following sentence shall be added to the end of the paragraph: "A record of tests or inspections will be maintained on a log at that facility or other reasonably accessible and convenient location."

6. In addition to the notifications required by 40 CFR 265.56(d)(2), notification shall be made to the on-scene coordinator, the National Response Center and the Virginia Department of Emergency Management, Emergency Operations Center. In the associated report filed under 40 CFR 265.56(j), the owner or operator shall include such other information specifically requested by the director, which is reasonably necessary and relevant to the purpose of an operating record.

7. In addition to the requirements of 40 CFR 265.91, a log shall be made of each ground water monitoring well describing the soils or rock encountered, the permeability of formations, and the cation exchange capacity of soils encountered. A copy of the logs with appropriate maps shall be sent to the department.

8. The following text shall be substituted for 40 CFR 265.143(g) and 40 CFR 265.145(g): "An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility in Virginia. Evidence of financial assurance submitted to the department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure or post-closure assured by the mechanism. The amount of funds available through the mechanism must be no

less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure or post-closure care of any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

9. In 40 CFR 265.147(a)(1)(ii), 40 CFR 265.147(g)(2), and 40 CFR 265.147(i)(4), the term "Virginia" shall not be substituted for the term "State" or "States."

10. In 40 CFR 265.191(a), the compliance date of January 12, 1988, applies only for HSWA tanks. For non-HSWA tanks, the compliance date is November 2, 1986.

11. In 40 CFR 265.191(c), the reference to July 14, 1986, applies only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1987.

12. In 40 CFR 265.193, the federal effective dates apply only to HSWA tanks. For non-HSWA tanks, the applicable date is January 12, 1987 is replaced with November 2, 1997.

13. The following text shall be substituted for 40 CFR 265.440(a): "The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before January 14, 1993, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to January 14, 1993. All other drip pads are new drip pads. The requirement at 40 CFR 265.443(b)(3) to install a leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 24, 1992. For non-HSWA drip pads, the requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those non-HSWA drip pads that are constructed after September 8, 1993, except for those constructed after September 8, 1993, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to September 8, 1993."

14. In 40 CFR 265.1083(c)(4)(ii), the second occurrence of the term "EPA" shall mean the United States Environmental Protection Agency.

15. In addition to the requirements of 40 CFR 265.310, the owner or operator shall consider at least the following factors in addressing the closure and post-closure care objectives of this part:

- a. Type and amount of hazardous waste and hazardous waste constituents in the landfill;
- b. The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;
- c. Site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration;

- d. Climate, including amount, frequency and pH of precipitation;
- e. Characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover; and
- f. Geological and soil profiles and surface and subsurface hydrology of the site.

16. Additionally, during the post-closure care period, the owner or operator of a hazardous waste landfill shall comply with the requirements of 40 CFR 265.116 and the following items:

- a. Maintain the function and integrity of the final cover as specified in the approved closure plan;
- b. Maintain and monitor the leachate collection, removal, and treatment system, if present, to prevent excess accumulation of the leachate in the system;
- c. Maintain and monitor the landfill gas collection and control system, if present, to control the vertical and horizontal escape of gases;
- d. Protect and maintain, if present, surveyed benchmarks; and
- e. Restrict access to the landfill as appropriate for its post-closure use.

17. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia.

18. Regulated units of the facility are those units used for storage treatment or disposal of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills that received hazardous waste after July 26, 1982. In addition to the requirements of Subpart G of 40 CFR Part 265, owners or operators of regulated units who manage hazardous wastes in regulated units shall comply with the closure and post-closure requirements contained in Subpart G of 40 CFR Part 264, Subpart H of 40 CFR Part 264, and Subpart K of 40 CFR Part 264 through Subpart N of 40 CFR Part 264, as applicable, and shall comply with the requirements in Subpart F of 40 CFR Part 264 during any post-closure care period and for the extended ground water monitoring period, rather than the equivalent requirements contained in 40 CFR Part 265. The following provisions shall also apply:

- a. For owners or operators of surface impoundments or waste piles included above who intend to remove all hazardous wastes at closure in accordance with 40 CFR 264.228(a)(1) or 40 CFR 264.258(a), as applicable, submittal of contingent closure and contingent post-closure plans is not required. However, if the facility is subsequently required to close as a landfill in accordance with Subpart N of 40 CFR Part 264, a modified closure plan shall be submitted no more than 30 days after such determination. These plans will be processed as closure plan amendments. For such facilities, the corresponding post-closure plan shall be submitted within 90 days of the determination that the unit shall be closed as a landfill.
- b. A permit application as required under 9VAC20-60-270 to address the post-closure care requirements of 40 CFR 264.117 and for ground water monitoring requirements of 40 CFR 264.98, 40 CFR 264.99, or 40 CFR 264.100, as applicable, shall be submitted for all regulated units which fail to satisfy the requirements of closure by removal or decontamination in 40 CFR 264.228(a)(1), 40 CFR 264.258(a), or 40 CFR 264.280(d) and 40 CFR 264.280(e), as applicable.

The permit application shall be submitted at the same time as the closure plan for those units closing with wastes in place and six months following the determination that closure by removal or decontamination is unachievable for those units attempting such closure. The permit application shall address the post-closure care maintenance of both the final cover and the ground water monitoring wells as well as the implementation of the applicable ground water monitoring program whenever contaminated soils, subsoils, liners, etc., are left in place. When all contaminated soils, subsoils, liners, etc., have been removed yet ground water contamination remains, the permit application shall address the post-closure care maintenance of the ground water monitoring wells as well as the implementation of the applicable ground water monitoring program.

c. In addition to the requirements of 40 CFR 264.112(d)(2)(i) for requesting an extension to the one year limit, the owner or operator shall demonstrate that he will continue to take all steps to prevent threats to human health and the environment.

d. In addition to the requirements of 40 CFR 264.119(c), the owner or operator shall also request a modification to the post-closure permit if he wishes to remove contaminated structures and equipment.

**9VAC20-60-266. Adoption of 40 CFR Part 266 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 266 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 266 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 266 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In addition to the requirements of Subpart C of 40 CFR Part 266, those who generate or transport recyclable materials or those who own or operate facilities that use or store recyclable materials are also subject to applicable requirements of Parts IV (9VAC20-60-305 et seq.), VII (9VAC20-60-420 et seq.), and XII (9VAC20-60-1260 et seq.) of these regulations if the materials are used in a manner constituting disposal.

2. In addition to the requirements of Subpart C of 40 CFR Part 266, those who generate or transport recyclable materials or those who own or operate facilities that use or store recyclable materials are also subject to applicable requirements of Parts IV, VII and XII of these regulations if the recyclable materials are for precious metals recovery.

3. In addition to the requirements of Subpart G of 40 CFR Part 266, those who store lead-acid batteries subject to 40 CFR 266.80(b) are also subject to the requirements of Parts IV, VII and XII of these regulations.

**9VAC20-60-268. Adoption of 40 CFR Part 268 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection

Agency set forth in 40 CFR Part 268 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 268 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 268 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 268.1(e)(3), the term "EPA" means the United States Environmental Protection Agency.
2. In 40 CFR 268.1(f) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."
3. In 40 CFR 268.5, 40 CFR 268.6, 40 CFR 268.10, 40 CFR 268.11, 40 CFR 268.12, 40 CFR 268.40(b), 40 CFR 268.42(b) and 40 CFR 268.44(a) through (g), the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee, the term "Regional Administrator" shall mean the regional administrator of the United States Environmental Protection Agency for Region III or his designee, and the term "EPA" shall mean the United States Environmental Protection Agency.
4. In 40 CFR 268.9(d), the term "EPA Region or authorized State" shall mean the Commonwealth of Virginia.
5. 40 CFR 268.13 is not included in the incorporation of 40 CFR Part 268 by reference and is not a part of the Virginia Hazardous Waste Management Regulations.
6. Any applications or petitions made to the director or the department in compliance with 40 CFR 268.44 shall comply with procedures of Part XIV (9VAC20-60-1370 et seq.) of these regulations.
7. In Subpart C of 40 CFR Part 268 there are dates on which a provision is or was to begin and dates on which national capacity variances expires or expired. None of these dates prior to the effective date of these regulations shall be incorporated by reference or be a part of the Virginia Hazardous Waste Management Regulations. Requirements associated with these expired dates shall be considered to be currently in effect. This exclusion from these regulations shall not be considered to remove or diminish any responsibility a person has or had regarding these dates under federal requirements related to the dates or during the interim following these dates.

**9VAC20-60-270. Adoption of 40 CFR Part 270 by reference.**

A. Except as otherwise provided, those regulations of the United States Environmental

Protection Agency set forth in 40 CFR Part 270 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of incorporated sections of 40 CFR Part 270 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 270 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR Part 270 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

2. In 40 CFR 270.5, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

3. In 40 CFR 270.5, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia, and no permits shall be issued for underground injection facilities.

5. Validity of the federal HWM permits. This section replaces 40 CFR 270.51, which is not included in the incorporation of 40 CFR Part 270 by reference and is not a part of the Virginia Hazardous Waste Management Regulations.

a. Hazardous waste management facilities located in Virginia which possess an effective final RCRA permit issued by the United States Environmental Protection Agency will be considered to possess a valid Virginia hazardous waste management permit for the duration of the unexpired term of the federal permit, provided that:

(1) The facility remains in compliance with all of the conditions specified in the federal permit;

(2) The operator submits a complete copy of the federal permit to the department no later than the effective date of the federal permit; and

(3) The owner and operator of the facility submit a request to continue the federal permit addressed to the department.

b. Federal permits issued to hazardous waste management facilities located in Virginia by the United States Environmental Protection Agency pursuant to HSWA requirements which constitute the federal portion of the combined Virginia—United States Environmental Protection

Agency RCRA permits are considered, for the purposes of this chapter, as addenda to the Virginia permits and will remain in effect during the unexpired term of the Virginia permit.

6. All permit applications and reapplications required by these regulations shall be accompanied by an appropriate permit application fee as specified in Part XII (9VAC20-60-1260 et seq.) of this chapter. Applications or reapplications not accompanied by such fees will not be considered complete. The director shall not issue a permit before receiving a complete application except permits by rule, emergency permits, or continued federal permits. In addition, an application for a permit is not complete until the department receives an application form and any supplemental information, which are completed to the department's satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. In cases where Part A of the application was first submitted to the United States Environmental Protection Agency Administrator, a copy of such submission shall also be sent to the department.

7. Interim status.

a. The director may deny interim status to any owner or operator if, at the time the Part A application is submitted, the facility is in violation of any regulation of the board so as to pose a substantial present or potential hazard to human health or environment.

b. Unless subject of an exception specified in 40 CFR 270.73, interim status terminates when final disposition of a permit application is made or when interim status is terminated by the director. Interim status may be terminated for any of the following reasons:

- (1) Failure to submit a completed Part B application on time;
- (2) Failure to furnish any information required by this chapter;
- (3) Falsification, misrepresentation or failure to fully disclose any information submitted or required to be kept under this chapter;
- (4) Violation of this chapter; and
- (5) A determination that the facility poses a significant threat to public health or the environment.

c. The director may terminate the interim status upon receiving a voluntary request for such an action from the owner and the operator of the facility.

(1) To be considered for voluntary termination such request shall:

- (a) Be received by the department prior to the issuance of the request to submit Part B of the permit application in accordance with this section; and
- (b) Be accompanied by a waiver of procedures contained in this section.

(2) Termination under this part will not be granted to the owner and operator of the facility:

- (a) Which is not in compliance with the standards contained in 9VAC20-60-265; or
- (b) When termination proceedings have been instituted under this section.

d. The effective date of the termination of the interim status will be determined by the director to allow for proper closure of the facility in accordance with Subpart G of 40 CFR Part 264 and Subpart G of 40 CFR Part 265, as applicable.

8. Each permit shall include permit conditions necessary to achieve compliance with the Virginia Waste Management Act (§10.1-1400 et seq. of the Code of Virginia) and regulations, including each of the applicable requirements specified in this part (Part III) of these regulations. In satisfying this provision, the director may incorporate applicable requirements of Part III directly into the permit or establish other permit conditions that are based on these requirements.

9. In addition to the other general information requirements to be part of the contents of any Part B in 40 CFR 270.14(b), the following information is required for all hazardous waste management facilities, except as provided otherwise:

a. A copy of the general inspection schedule required by 40 CFR 264.15(b). Include, where applicable, as part of the inspection schedule, specific requirements in 40 CFR 264.174, 40 CFR 264.193(i), 40 CFR 264.195, 40 CFR 264.226, 40 CFR 264.254, 40 CFR 264.273, 40 CFR 264.303, 40 CFR 264.573, 40 CFR 264.574, 40 CFR 264.602, 40 CFR 264.1033, 40 CFR 264.1052, 40 CFR 264.1053, and 40 CFR 264.1058.

b. Traffic pattern, estimated volume (number, types of vehicles) and control; describe access road surfacing and load bearing capacity; show traffic control signals.

10. A period of 30 days shall elapse between the date of public notice and the date of a public hearing under 40 CFR 270.42(b)(4) and 40 CFR 270.42(c)(4).

11. Notices given under 40 CFR 270.30(l)(1) shall be written.

12. The following additional information is required from owners or operators of facilities that store or treat hazardous waste in waste piles if an exemption is sought to Subpart F of 40 CFR Part 264 and 40 CFR 264.251 as provided in 40 CFR 264.250(c) and 40 CFR 264.90(b)(2):

a. An explanation of how the standards of 40 CFR 264.250(c) will be complied with; and

b. Detailed plans and an engineering report describing how the requirements of 40 CFR 264.90(b)(2) will be met.

13. The agencies of the Commonwealth publish notices of regulatory activity, permit hearings and other official notices in the Virginia Register. Any references in incorporated federal text that indicate a publication is to be made in the Federal Register shall be construed to mean the Virginia Register when such publication is to be made by an agency of the Commonwealth.

14. Appeal rights and procedures related to a remedial action plan (RAP) included in 40 CFR 270.155, especially appeals to the EPA Environmental Appeals Board, are not incorporated into these regulations. Appeals of actions related to the content or process of developing a RAP will be governed by the Administrative Process Act, Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

15. The conditions of an expired permit continue in force until the effective date of the new permit if the permittee has submitted a timely reapplication that is a complete application for a

new permit; and the director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit. Permits that are continued remain fully effective and enforceable.

When the permittee is not in compliance with the conditions of the expiring or expired permit, the director may choose to do any or all of the following:

- a. Initiate enforcement action based on the permit that has been continued;
- b. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease activities authorized by the continued permit or be subject to enforcement action for operating without a permit;
- c. Issue a new permit with appropriate conditions; or
- d. Take other actions authorized by this chapter.

16. Part XII (9VAC20-60-1260 through 9VAC20-60-1285) of this chapter applies to all permitted facilities, to facilities operating under interim status, to facilities subject to an order or agreement, and to all large quantity generators. In addition to permit application fees, a permitted treatment, storage, and disposal facility is assessed an annual fee. A facility that operates under interim status, a facility that is subject to an order or agreement, and a large quantity generator are also assessed annual fees.

**9VAC20-60-273. Adoption of 40 CFR Part 273 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 273 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 273 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 273 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 273.32(a)(3), the term "EPA" shall mean the United States Environmental Protection Agency or his designee.
2. In addition to universal wastes included in 40 CFR Part 273, other wastes are defined to be universal wastes in Part XVI (9VAC20-60-1495 et seq.) of these regulations. Part XVI also contains waste specific requirements associated with the waste defined to be universal waste therein. In 40 CFR 273.1, the definitions in 40 CFR 273.9, and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous waste that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such

terms and requirements as shall therein be ascribed." Any listing of universal wastes in 40 CFR Part 273 shall incorporate the universal wastes set out in Part XVI in a manner identical to those included in the federal text; whether, for example, as in 40 CFR 273.32(b)(4), 40 CFR 273.32(b)(5), 40 CFR 273.39(b)(2), and 40 CFR 273.62(a)(20) or as items to be included in a calculation or requirement as in the definitions of "Large Quantity Handler of Universal Waste" and "Small Quantity Handler of Universal Waste."

3. In addition to the requirements for lamps contained in 40 CFR 273, the following requirements shall apply:

a. A used lamp shall be considered discarded and a waste on the date the generator permanently removes it from its fixture. An unused lamp becomes a waste on the date the generator discards it since that is the date on which he is deemed to have decided to discard it in accordance with 40 CFR 273.5(c)(2).

b. Universal waste lamps may be crushed or intentionally broken on the site of generation to reduce their volume; however, breaking, crushing, handling, and storage must occur in a safe and controlled manner that minimizes the release of mercury to the workplace and the environment and must comply with 29 CFR 1910.1000. The procedure for breaking, crushing, handling and storing of the lamps must be documented and use a mechanical unit specifically designed for the process that incorporates the containment and filtration of process air flows to remove mercury-containing vapors and dusts.

c. All handlers of universal waste (large or small quantity) who crush mercury-containing lamps under these universal waste regulations shall comply with the following provisions:

(1) The handler must use a mercury-containing lamp crusher indoors with air pollution controls that capture both particulate and vapor phase mercury. At a minimum, these controls must include, or must be equivalent to the protection provided by a HEPA filter, activated charcoal, and a negative air flow (vacuum) through the crusher unit. The crusher must have documentation from the manufacturer that demonstrates that the unit:

(a) Is capable of achieving the Occupational Safety and Health Administration Permissible Exposure Limit (PEL) for mercury of 0.10 milligram per cubic meter in indoor ambient air (under individual site-specific use conditions); and

(b) Achieves a particle retention rate of 99.97% in the HEPA filter (at a particle diameter of 0.3 microns).

(2) The handler must develop and implement a written procedure specifying how to safely crush universal waste lamps. This procedure must include: type of equipment to be used to crush the lamps safely, operation and maintenance of the unit in accordance with written procedures developed by the manufacturer of the equipment, and proper waste management practices. The handler must document maintenance activities and keep records of maintenance. In addition, the unit operator must receive training in crushing procedures, waste handling and emergency procedures (training must be documented).

(3) Residues, filter media, or other solid waste generated as part of the crushing operation, which are not being reclaimed and which exhibit any characteristics of a hazardous waste, must be

managed in accordance with all applicable hazardous waste management requirements.

(4) The handler must ensure that spills of the contents of the universal waste lamps that may occur during crushing operations are cleaned up in accordance with 40 CFR 273.13 (d)(2) or 40 CFR 273.33 (d) (2).

(5) The handler must store the crushed lamps in closed, nonleaking drums or containers that are in good condition. Transfer of the crushed lamps to other drums or containers is not permitted.

(6) Drums or containers used for storage of crushed lamps must be properly sealed and labeled. The label shall bear the words "Universal Waste-Lamp(s)," "Waste Lamp(s)," or "Used Lamp(s)."

4. A small quantity handler having a waste subject to the requirements of 40 CFR 273.13(a)(3)(i) is also subject to 9VAC20-60-270 and Parts IV (9VAC20-60-305 et seq.), VII (9VAC20-60-420 et seq.), and XII (9VAC20-60-1260 et seq.) of this chapter.

#### **9VAC20-60-279. Adoption of 40 CFR Part 279 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 279 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 279 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 279 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Only one sentence of 40 CFR 279.82 is included in the incorporation of 40 CFR Part 279 by reference. The sentence, "The use of used oil as a dust suppressant is prohibited." is incorporated by reference. All other words in 40 CFR 279.82 are not incorporated by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

2. [Reserved.]

### **Part IV**

#### **Notification of Hazardous Waste Management Activity Regulations**

##### **9VAC20-60-305. General.**

A. Any person that manages a hazardous waste in the Commonwealth of Virginia shall notify the department of these activities.

B. Any person as described in 9VAC20-60-305 A that has notified the EPA or is subject to the requirements to notify the EPA as specified in Vol. 45, No. 39 of the Federal Register, dated February 26, 1980, pages 12746 through 12754, is subject to the provisions of this chapter.

C. The purpose of this chapter is to provide a means for the Commonwealth of Virginia to utilize the information provided by all who complied with the notification requirements of the EPA as

described in 9VAC20-60-305 B and to assure that all persons who did not notify the EPA as described in 9VAC20-60-305 B or all who initiated hazardous waste management activities subsequent to the requirements of the EPA as referenced in 9VAC20-60-305 B shall notify the department of their hazardous waste management activities.

**9VAC20-60-310. [Repealed]**

**9VAC20-60-315. Notification.**

A. Any person that notified the EPA of hazardous waste management activities as referenced in 9VAC20-60-305 B shall provide a copy of that notification to the department.

B. Any person involved in hazardous waste management activities that did not comply with the notification requirements of the EPA as referenced in 9VAC20-60-305 B but is subject to those requirements shall notify the department in writing of their hazardous waste management activities by the effective date of this chapter. Notification shall be accomplished by the use of EPA Form 8700-12.

C. Any person who initiated a hazardous waste management activity subsequent to the preliminary notification period of 42 USC §6930 but prior to the effective date of this chapter shall notify the department of the initiation of such activities by the effective date of this chapter. Notification shall be accomplished by the use of EPA Form 8700-12.

D. Anyone who becomes a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record. Any large quantity generator who ceases to be a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record.

E. Transporters shall provide only one notification form for all transportation activities.

F. One notification form is required for each generator site.

G. A notification form is required for each storage, treatment, disposal, or other facility. However, if one geographic site includes more than one storage, treatment or disposal activity, only one notification form for the entire facility site is required.

H. New generators, transporters, treaters, storers, and disposers (those initiating activities subsequent to the assumption of the hazardous waste management program by the Commonwealth) shall comply with the requirements of 9VAC20-60-262, 9VAC20-60-263, and 9VAC20-60-264, as applicable, to obtain an identification number from the administrator or the department.

**9VAC20-60-320. [Repealed]**

**9VAC20-60-325. Prohibition.**

No hazardous wastes subject to this chapter may be transported, treated, stored, or disposed of unless notification has been given as required under this chapter.

**9VAC20-60-328. EPA identification number.**

A. A generator shall not treat, store, dispose of, transport, or offer for transportation hazardous waste without having received an EPA identification number from the administrator or the department.

B. A generator who has not received an EPA identification number may obtain one by applying to the department using EPA Form 8700-12. Upon receiving a request, the department will assign an EPA identification number to the generator.

C. A generator shall not offer his hazardous waste to transporters or to facilities that have not received an EPA identification number.

D. Provisional identification number. If an emergency or other unusual incident occurs which causes a necessity for the rapid transport of a hazardous waste to an authorized hazardous waste management facility, the generator involved in such a circumstance can telephone the Department of Environmental Quality (804-698-4000) and obtain a provisional identification number. Applicants receiving such a number will be mailed a blank EPA Form 8700-12 that shall be completed and returned to the Department of Environmental Quality regional office within 10 calendar days. (Note: The department's website, <http://www.deq.state.va.us>, or the receptionist at 804-698-4000, will provide information on how to contact the appropriate regional office.)

## **Part V**

### **Manifest Regulations for Hazardous Waste Management [Repealed]**

#### **APPENDIX 5.1. [REPEALED]**

## **Part VI**

### **Regulations Applicable to Generators of Hazardous Waste [Repealed]**

#### **9VAC20-60-330 to 9VAC20-60-410. [Repealed]**

#### **APPENDIX 6.1. [REPEALED]**

## **Part VII**

### **Regulations Applicable to Transporters of Hazardous Waste**

#### **9VAC20-60-420. General.**

A. This chapter applies to all persons who transport a hazardous waste as defined in this chapter and applies to all shipments of hazardous waste that originate within the Commonwealth or that terminate in the Commonwealth but originate in another state or foreign country. However, this chapter does not apply to the shipment of a hazardous waste on the site of a hazardous waste generator, nor on the site of a permitted hazardous waste management facility. Nothing in this part (9VAC20-60-420 et seq.) shall be construed as imposing any requirement on transporters of or the transportation of universal waste not otherwise imposed in 9VAC20-60-273.

B. Transporters of hazardous waste shipments originating outside the Commonwealth and terminating in another state shall comply with 9VAC20-60-490 and applicable requirements of

9VAC20-60-263 while in transit through the Commonwealth.

C. All transporters of hazardous waste shall comply with the applicable portions of the Regulations Governing the Transportation of Hazardous Materials (9VAC20-110) and Parts III (9VAC20-60-124 et seq.), IV (9VAC20-60-305 et seq.), and VII (9VAC20-60-420 et seq.) of this chapter.

D. A transporter is a generator if he:

1. Transports hazardous waste into the Commonwealth from a foreign country; or
2. Mixes hazardous wastes of different shipping descriptions specified in Regulations Governing the Transportation of Hazardous Materials by placing them into a single container.

E. All transporters of hazardous waste shipments originating or terminating or both in the Commonwealth are required to obtain a permit from the director in accordance with 9VAC20-60-450.

F. Transporters of materials that are used in a manner that constitutes disposal are subject to the requirements of Parts III, IV, and VII.

G. Transporters of hazardous waste fuel are subject to the applicable requirements of 9VAC20-60-266.

**9VAC20-60-430. Recordkeeping and reporting requirements.**

A. Except as provided in 9VAC20-60-430 B and 9VAC20-60-430 C, all transporters shall retain one signed copy of all manifests in their records for not less than three years from the date of acceptance for shipment by the initial transporter. The retained copy shall show his signature as well as those of the generator and the designated facility owner or operator, or next designated transporter.

B. For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter shall retain a copy of the shipping paper containing all the information required in 40 CFR 263.20(e)(2) for a period of three years from the date of acceptance by the initial transporter.

C. For shipments of hazardous waste by rail within the United States:

1. The initial rail transporter shall keep a copy of the manifest and shipping paper with all the information required in 40 CFR 263.20(f)(2) for a period of three years from the date the hazardous waste was accepted by the initial transporter.
2. The final rail transporter shall keep a copy of the signed and dated manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial transporter.
3. Intermediate rail transporters are not required to keep records pursuant to this chapter.

D. A transporter who transports hazardous waste out of the United States shall keep a copy of the manifest, indicating that the hazardous waste left the United States, for a period of three years

from the date the waste was accepted by the initial transporter.

E. The periods of retention referred to in this part are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the director.

F. All transporters permitted by the director under 9VAC20-60-450 are required to submit an annual report of hazardous waste transporting activities. The annual report shall be a summary of activities and shall be submitted on and include the information required by the Transporter Annual Report form (Form 7.2-1). The annual report shall be submitted within 90 days of the close of the reporting year. The reporting year ends December 31 of each calendar year.

**9VAC20-60-440. Identification number.**

A. All persons who transport hazardous waste within, out of or into the Commonwealth shall apply for and receive from the department an identification number prior to such transport.

B. An EPA identification number shall be obtained from the department by submitting an application on EPA Form 8700-12.

C. The identification number issued to the transporter shall be included at all times on:

1. All correspondence related to the transport of hazardous waste and shall be displayed in the format as follows:

Hazardous Waste Transporter ID Number \_\_\_\_\_

Virginia Hazardous Waste Transporter Permit Number \_\_\_\_\_;

2. The manifest provided by the generator of a hazardous waste and utilized in the transport of hazardous waste and

3. All documents related to the reporting of a discharge or accident.

D. The identification number and permit number shall remain unique to the applicant as long as the applicant continues to do business as a transporter of hazardous waste in the Commonwealth of Virginia. The identification number may not be transferred without the approval of EPA. The permit number may not be transferred without the approval of the director.

E. Provisional identification number. If an emergency or other unusual incident occurs which causes a necessity for the rapid transport of a hazardous waste to an authorized HWM facility, the transporter involved in such a circumstance can telephone the Department of Environmental Quality (804-698-4000) and obtain a provisional identification number. Applicants receiving such a number will be mailed a blank EPA Form 8700-12, which shall be completed and returned to the department within 10 calendar days.

**9VAC20-60-450. Transporter permit.**

A. This chapter applies to all persons who transport a hazardous waste, except as otherwise provided in Part VII (9VAC20-60-420 et seq.) of this chapter.

B. The transporter permit required under 9VAC20-60-450 applies only to those transporters who transport hazardous waste shipments which originate or terminate or both in the Commonwealth. Transporters who transport hazardous waste only through the Commonwealth are not required to obtain a transporter permit.

C. Permit issuance. Upon receipt of a complete application, Form 7.1, accompanied by the appropriate permit application fee as specified in Part XII (9VAC20-60-1260 et seq.) of this chapter, the director shall either:

1. Issue a permit, provided conditions of 9VAC20-60-440 are met; or
2. Deny the permit when it can be demonstrated that the transporter has violated regulations of the Commonwealth, another state or the federal government, so as to pose substantial present or potential hazard to health or environment. The procedure for denying a permit shall be consistent with the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

D. The term of the transporter permit shall be 10 years. A permit shall remain in effect until one or more of the following conditions are met:

1. The transporter ceases business operation;
2. The transporter requests, in writing, that the permit be terminated;
3. The permit is revoked;
4. The director determines that an emergency exists and that summary termination of a permit is necessary to prevent the creation or continuance, or both, of an immediate and present threat to human health or critical damage to the environment;
5. Upon the expiration date of the permit, unless reapplication for a new permit has been received by the department 30 days prior to such date.

E. Revocation of permit.

1. Revocation for cause. The director may revoke a transporter's permit when it can be demonstrated that a transporter has violated this chapter so as to pose substantial present or potential hazard to health or environment. The procedure for revoking a permit shall be consistent with the Administrative Process Act of the Commonwealth.

2. Revocation and reissuance. Whenever the transporter changes his corporate name, ownership or the EPA identification number, he shall notify the director within 30 days of such a change. Upon receiving such a notification the department will revoke the old permit and reissue it reflecting the appropriate changes. The reissued permit will remain valid for the unexpired duration of the revoked permit.

3. Within 30 days of the receipt of the notice of revocation, the original copy of the permit shall be returned to the department.

F. The transporter permit number shall appear at all times on:

1. All correspondence to the Commonwealth;

2. All documents related to the reporting of a discharge or accident.

G. Temporary transporter permit. If a provisional identification number is issued by the department pursuant to the provisions of 9VAC20-60-440 E the applicant may obtain a temporary transporter permit by calling the department at 804-698-4000. The permit will be valid only for the duration of the activity that required the provisional EPA identification number. The applicant shall submit a permit application conforming with 9VAC20-60-450 C within 10 calendar days.

H. Emergency transporter permit. In the event of a determination by the Commonwealth that circumstances dictate expedient action to protect human health and environmental quality, provisions of 9VAC20-60-260, 9VAC20-60-262, and Part VII of this chapter may be waived by the director or his designee. Such waiver will be considered as an emergency transporter permit valid for the duration of an emergency only.

**9VAC20-60-460. Labeling, placarding, and marking.**

**9VAC20-60-470. Use of the manifest system.**

**9VAC20-60-480. Acceptance, shipment and delivery of hazardous waste.**

A. A transporter shall not accept for shipment any hazardous waste for transport without determining that requirements of 9VAC20-60-263 have been complied with.

B. If a manifest is required by 9VAC20-60-263, the generator shall sign and date the manifest and release the hazardous waste shipment to the transporter.

C. The transporter who is subject to 9VAC20-60-480 B shall sign and date the manifest and accept the hazardous waste for shipment.

D. The transporter shall not accept any hazardous waste for shipment unless the generator has met all applicable labeling, container and packaging requirements of this chapter.

E. If the transporter ships the hazardous waste to a treatment, storage or disposal facility or transfers the hazardous waste to another transporter, such acts shall be in accordance with the following:

1. The receiving treatment, storage or disposal facility or transporter shall have an identification number issued by the EPA or authorized state;

2. The manifest shall be signed over to the receiving treatment, storage or disposal facility or transporter with the prior transporter retaining a copy of the manifest.

F. The transporter shall maintain the labeling required by the Regulations Governing the Transportation of Hazardous Materials (9VAC20-110) during the shipment of the hazardous waste.

G. 1. The transporter shall deliver the entire quantity of hazardous waste that he accepted for shipment from a generator or a previous transporter to:

- a. The designated facility listed on the manifest;

b. The next designated transporter; or

c. The place outside the United States designated by the generator.

2. If the hazardous waste shipment cannot be delivered in accordance with 9VAC20-60-480 G 1, the transporter must contact the generator for further directions concerning an alternate facility for delivery and must revise the manifest according to the generator's instructions.

H. If the hazardous waste shipment will terminate within the Commonwealth of Virginia, the transporter shall deliver the shipment to a storage, treatment, disposal, or other facility permitted by the Commonwealth of Virginia under the provisions of this chapter or a facility permitted by the EPA or which qualifies for interim status.

I. If the shipment of hazardous waste is transported out of the Commonwealth, the transporter shall deliver the shipment to a designated facility permitted by that state under an approved program or by EPA or which qualifies for interim status in the opinion of the applicable aforementioned authority.

J. If the shipment of hazardous waste is shipped out of the United States, the transporter shall handle the manifest in accordance with 9VAC20-60-263.

K. If the transporter mixes hazardous wastes of different shipping descriptions specified in Regulations Governing the Transportation of Hazardous Materials by placing them into a single container, such transporter shall also comply with 9VAC20-60-262.

L. All transporters shipping a hazardous waste to a destination within the Commonwealth from another state shall comply with all provisions of this chapter including obtaining a transporter permit from the director and an identification number from the EPA.

M. A transporter that imports a hazardous waste from a foreign country into the Commonwealth shall comply with the provisions of 9VAC20-60-262 and shall obtain a transporter permit from the director and obtain an ID number from the EPA.

#### **9VAC20-60-490. Discharges.**

A. The transporter shall comply with all federal and Commonwealth requirements relative to discharges.

B. 1. In the event of a discharge or spill of hazardous wastes, the transporter shall take appropriate emergency actions to protect human life, health, and the environment and shall notify appropriate local authorities. Upon arrival on the scene of state or local emergency or law-enforcement personnel, the transporter shall carry out such actions as required of him.

2. The transporter shall clean up any hazardous waste discharge that occurs during transportation and shall take such action as is required by the federal government, the Virginia Department of Emergency Management, the director, or local officials, so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

3. If the discharge of hazardous waste occurs during transportation and the director or his designee determines that immediate removal of the waste is necessary to protect human health or

the environment, an emergency transporter permit may be issued in accordance with 9VAC20-60-450 H.

4. The disposal of the discharged materials shall be done in a manner consistent with this chapter and other applicable Virginia and federal regulations.

C. Discharges by air, rail, highway, or water (nonbulk) transporters.

1. In addition to requirements contained in preceding parts, an air, rail, highway or water (nonbulk) transporter who has discharged hazardous waste shall give notice at the earliest practicable moment to agencies indicated in 9VAC20-60-490 C 2 after each incident that occurs during the course of transportation (including loading, unloading, and temporary storage) in which as a direct result of the discharge of the hazardous wastes:

- a. A person is killed;
- b. A person receives injuries requiring his hospitalization;
- c. Estimated carrier or other property damage exceeds \$50,000;
- d. Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material;
- e. Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or
- f. A situation exists of such a nature that, in the judgment of the transporter, it should be reported in accordance with 9VAC20-60-490 C 2 even though it does not meet the above criteria (e.g., continuing danger of life exists at the scene of the incident), or as required by 49 CFR 171.15.

2. The notice required by 9VAC20-60-490 C 1 shall be given to:

- a. The National Response Center, U.S. Coast Guard, at 800-424-8802 (toll free) or at 202-267-2675 (toll call); and
- b. The Virginia Department of Emergency Management at 800-468-8892 (toll free) or 804-674-2400 (Richmond local area). In a case of discharges affecting state waters, the notice shall also be given to the Pollution Response Program (PreP) Coordinator in the appropriate regional office of the department.

3. When notifying as required in 9VAC20-60-490 C 1, the notifier shall provide the following information:

- a. Name of person reporting the discharge and his role in the discharge;
- b. Name, telephone number and address of the transporter;
- c. Name, telephone number and address of the generator;
- d. Telephone number where the notifier can be contacted;

- e. Date, time and location of the discharge;
  - f. Type of incident, nature of hazardous waste involvement, and whether a continuing danger to life exists at the scene;
  - g. Classification, name and quantity of hazardous waste involved; and
  - h. The extent of injuries, if any.
4. Within 15 calendar days of the discharge of any quantity of hazardous waste, the transporter shall send a written report on DOT Form F5800.1 in duplicate to the Chief, Information System Division, Transportation Programs Bureau, Department of Transportation, Washington, D.C. 20590. Two copies of this report will also be filed with the Department of Environmental Quality, Post Office Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009.
5. In reporting discharges of hazardous waste as required in 9VAC20-60-490 C 4, the following information shall be furnished in Part H of the DOT Form F5800.1 in addition to information normally required:
- a. An estimate of the quantity of the waste removed from the scene;
  - b. The name and address of the facility to which it was taken; and
  - c. The manner of disposition of any unremoved waste.

A copy of the hazardous waste manifest shall be attached to the report.

D. Discharges by water (bulk) transporters.

- 1. A water (bulk) transporter shall, as soon as he has knowledge of any discharge of hazardous waste from the vessel, notify, by telephone, radio telecommunication or a similar means of rapid communication, the office designated in 9VAC20-60-490 C 2.
- 2. If notice as required in 9VAC20-60-490 D 1 is impractical, the following offices may be notified in the order of priority:
  - a. The government official predesignated in the regional contingency plan as the on-scene coordinator. Such regional contingency plan for Virginia is available at the office of the 5th U.S. Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705;
  - b. Commanding officer or officer-in-charge of any U.S. Coast Guard unit in the vicinity of the discharge; or
  - c. Commander of the 5th U.S. Coast Guard District.
- 3. When notifying the notifier shall provide the following information:
  - a. Name of person reporting the discharge and his role in the discharge;
  - b. Name, telephone number and address of the transporter;
  - c. Name, telephone number and address of the generator;

- d. Telephone number so the notifier can be contacted;
- e. Date, time, location of the discharge;
- f. Type of incident and nature of hazardous waste involvement and whether a continuing danger to life exists at the scene;
- g. Classification, name and quantity of hazardous waste involved; and
- h. The extent of injuries, if any.

E. Discharges at fixed facilities. Any transporter responsible for the release of a hazardous material (as defined in Part I (9VAC20-60-12 et seq.) of this chapter) from a fixed facility (e.g., transfer facility) which poses an immediate or imminent threat to public health and who is required by law to notify the National Response Center shall notify the chief administrative officers (or their designees) of the local governments of the jurisdictions in which the release occurs as well as the department.

#### **9VAC20-60-500. Transfer facilities.**

A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR 262.30 at a transfer facility for a period of 10 days or less is not subject to regulations established for facility management and permitting under these regulations with respect to the storage of those wastes.

#### **APPENDIX 7.1 [REPEALED]**

#### **APPENDICES 7.1-2 to 7.3. [REPEALED]**

#### **9VAC20-60-510. [Repealed]**

#### **APPENDICES 8.1 to 8.14. [REPEALED]**

### **Part IX**

#### **Hazardous Waste Management Facility Interim Status Standards [Repealed]**

#### **9VAC20-60-520 to 9VAC20-60-680. [Repealed]**

#### **9VAC20-60-690 to 9VAC20-60-700. [Reserved]**

#### **9VAC20-60-710 to 9VAC20-60-730. [Repealed]**

#### **APPENDICES 9.1 to 9.4. [REPEALED]**

### **Part X**

#### **Standards for Permitted Hazardous Waste Management Facilities [Repealed]**

#### **9VAC20-60-740 to 9VAC20-60-890. [Repealed]**

#### **9VAC20-60-900 to 9VAC20-60-920. [Reserved]**

**9VAC20-60-930 to 9VAC20-60-950. [Repealed]**

**APPENDICES 10.1 to 10.6. [REPEALED]**

## **Part XI**

### **Hazardous Waste Management Facility Permit Regulations [Repealed]**

**9VAC20-60-960 to 9VAC20-60-1250. [Repealed]**

**APPENDIX 11.1. [REPEALED]**

**APPENDIX 11.2. [REPEALED]**

## **Part XII**

### **Permit Application And Annual Fees**

**9VAC20-60-1260. Purpose, scope, and applicability.**

A. The purpose of this part is to establish a schedule of fees collected by the department in the support of its programs required by Parts III (9VAC20-60-270 et seq.), IV (9VAC20-60-305 et seq.) and VII (9VAC20-60-420 et seq.) of this chapter.

B. Part XII (9VAC20-60-1260 et seq.) of this chapter applies to all persons required to submit a permit application ("applicants") under 9VAC20-60-270 and 9VAC20-60-420 E unless specifically exempt under subsection G of this section, to facilities operating under interim status, to facilities subject to an order or agreement, and to all large quantity generators. The fees shall be assessed in accordance with 9VAC20-60-1270 through 9VAC20-60-1286.

C. When the director finds it necessary to modify any permit under 9VAC20-60-270, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9VAC20-60-1270 D even if the director shall have initiated the modification action.

D. When the director finds it necessary to revoke and reissue any permit in accordance with 9VAC20-60-270, the holder of that permit shall be considered an applicant for a new permit and shall be assessed a fee in accordance with 9VAC20-60-1270 C.

E. If the director finds it necessary either to revoke and reissue a permit or to perform a minor modification of a permit in accordance with 9VAC20-60-270, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9VAC20-60-1270 E. The holder of a permit shall not be assessed a permit modification fee for minor modifications.

F. When the director finds it necessary to issue an emergency treatment, storage, or disposal permit in accordance with 9VAC20-60-270, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9VAC20-60-1270 F. No permit application fee will be assessed to the holders of the emergency transportation permits issued in accordance with 9VAC20-60-450 H.

G. Exemptions.

1. The owners and operators of HWM treatment, storage, and disposal facilities who have submitted Part A of their application and who have qualified for interim status in accordance with 9VAC20-60-270 are exempt from the requirements of 9VAC20-60-1270 until a Part B application for the entire facility or a portion of the facility has been requested or voluntarily submitted. The owner and operator of a HWM facility submitting a Part B application will be considered an applicant for a new permit.
2. The owners and operators of HWM facilities that are deemed to possess a permit by rule in accordance with 9VAC20-60-270 are exempt from the requirements of 9VAC20-60-1270.
3. Hazardous waste generators that accumulate wastes on-site in accordance with 40 CFR 262.34 are not subject to regulations contained in 9VAC20-60-1270 since HWM permits are not required for such accumulations.

#### **9VAC20-60-1270. Determination of application fee amount.**

##### **A. General.**

1. Each application for a new or renewed permit and each application for a modification to a permit is a separate action and shall be assessed a separate fee. The amount of such fees is determined on the basis of this section.
2. The amount of the permit application fee is based on the costs directly associated with the permitting program required by Parts III (9VAC20-60-270 et seq.) and VII (9VAC20-60-420 et seq.) of this chapter and includes costs for personnel and contractual effort and the prorated costs of supplies, equipment, communications and office space. The fee schedules are shown in 9VAC20-60-1285.

##### **B. Transporter fees.**

1. Application fees for the transporter permits are shown in 9VAC20-60-1285 A. Based on the greater regulatory effort associated with the issuance of permits to the transporters without terminals or other facilities in the Commonwealth, the out-of-state transporters are charged higher fees.
2. Since Part VII of this chapter does not provide for a modification procedure, all transporter permit applications are considered to be for new permits.

##### **C. New HWM facility permits.**

1. All applicants for new or renewed hazardous waste treatment, storage, and disposal facility permits are assessed a base fee shown in 9VAC20-60-1285 B.
2. Applicants for a facility permit which includes one or more of the hazardous waste treatment, storage or disposal units or processes that require ground water protection or corrective action for solid waste management units in accordance with Subpart F of 40 CFR Part 264, Subpart K of 40 CFR Part 264, Subpart L of 40 CFR Part 264, Subpart M of 40 CFR Part 264, and Subpart N of 40 CFR Part 264, as applicable, ("land-based TSD units") are assessed a supplementary fee shown in 9VAC20-60-1285 B, in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate.

3. Applicants for a facility permit which includes one or more hazardous waste incineration, boiler, or industrial furnace units or processes regulated in accordance with Subpart O of 40 CFR Part 264 are assessed a supplementary fee shown in 9VAC20-60-1285 B, in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate.

4. Applicants for a facility permit for storage of hazardous wastes in containers, tanks or drip pads, or both, subject to Subpart I of 40 CFR Part 264, Subpart J of 40 CFR Part 264, and Subpart W of 40 CFR Part 264 will not be assessed any supplementary fees unless required to close and perform post-closure care as landfills as provided for in 40 CFR 264.197(b) and 40 CFR 264.571(b).

5. The transporter permits are separate permits and require a separate administrative action. Applicants for new treatment, storage, and disposal facility permits who also apply for a transporter permit will be assessed separate fees in accordance with subsection B of this section.

#### D. Modifications to existing HWM facility permits.

1. Except as provided for in subsection E of this section, all applicants for a modification of an existing HWM facility permit are assessed a modification base fee shown in 9VAC20-60-1285 C.

2. Applicants for a modification that includes or involves the addition of hazardous wastes not currently in the permit are assessed a supplementary modification fee shown in 9VAC20-60-1285 C, in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate.

3. Applicants for a major (Class 3) modification that includes or involves corrective action for solid waste management units under 40 CFR 264.101 and Title 40, Subpart S shall be assessed a supplementary modification fee shown in 9VAC20-60-1285 C in addition to supplementary fees specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate.

4. Applicants for a major (Class 3) modification that includes or involves the addition of one or more new hazardous waste land-based TSD units or processes; or requires a substantive change in the design of the existing land-based TSD units or processes, are assessed a supplementary modification fee shown in 9VAC20-60-1285 C in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate. For the purpose of this subsection, it will be deemed that a major change is required whenever a change in the design of the ground water protection system or whenever a new land treatment demonstration permit specified in 9VAC20-60-270 is necessary.

5. Applicants for a major (Class 3) modification that includes or involves the addition of one or more hazardous waste incineration units or processes, or requires a substantive change in the design of an existing incineration unit or process, are assessed a supplementary modification fee shown in 9VAC20-60-1285 C, in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate. For the purposes of this subsection, it will be deemed that a major change is required whenever a change occurs that necessitates the performance of a trial burn in accordance with 9VAC20-60-270.

6. Applicants for a major (Class 3) modification which includes or involves new treatment, storage or disposal units, processes or areas, or requires a substantive change in the design of any existing hazardous waste treatment, storage or disposal units, processes or areas, neither of which is a hazardous waste land-based TSD or incineration unit, are assessed a supplementary modification fee shown in 9VAC20-60-1285 C, in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate. For the purposes of this subsection, expansion of an existing container storage facility is not considered to be a major change.

7. Applicants for a modification that is not a minor modification and is a substantive (Class 2) as specified in 9VAC20-60-270 and that is not subject to the requirements of subdivisions 2 through 6 of this subsection are assessed a supplementary modification fee shown in 9VAC20-60-1285 C, in addition to the base fee specified in subdivision 1 of this subsection.

8. Applicants for numerous modifications subject to several supplementary fees will not be assessed a permit application fee in excess to the one required for a new permit for a comparable HWM facility.

E. Minor modifications of existing HWM facility permits. All applicants for minor (Class 1) modification of an existing HWM facility permit provided for in 9VAC20-60-270 are not assessed a fee.

F. Emergency permits. Applicants for an emergency hazardous waste treatment, storage or disposal permit as provided for in 9VAC20-60-270 are assessed a fee shown in 9VAC20-60-1285 E, unless the director shall determine that a lesser fee is appropriate at the time the permit is issued. No permit fee will be assessed for emergency treatment, storage, or disposal necessary for the remediation of abandoned or orphaned hazardous waste by the U.S. Environmental Protection Agency, the Virginia Department of Environmental Quality, the Virginia Department of Emergency Management, the Virginia State Police, the Virginia Department of Transportation, a U.S. Department of Defense Explosive Ordnance Disposal Team, a U.S. Army Technical Escort Unit or other federal government entities trained in explosive or munitions emergency response. No permit fee will be assessed for emergency treatment, storage, or disposal when a determination has been made by the Commonwealth that circumstances dictate expedient action to protect human health and environmental quality.

#### **9VAC20-60-1280. Payment of application fees.**

A. Due date.

1. Except as specified in subdivision 2 of this subsection, all permit application fees are due on the day of application and must accompany the application.

2. All holders of a Virginia HWM facility permit issued prior to January 1, 1988, shall submit the application fees as required by the conditions specified in that permit.

B. Method of payment. Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 10150, Richmond, VA 23240. When the department is able to accept electronic payments, payments may be submitted electronically.

C. Incomplete payments. All incomplete payments will be deemed nonpayments.

D. Late payment. No applications will be deemed to be complete (see 9VAC20-60-270) until the department receives proper payment.

**9VAC20-60-1283. Determination of annual fee amount.**

A. Each operator of a hazardous waste treatment, storage, or disposal facility shall be assessed an annual fee as shown in 9VAC20-60-1285 F to be paid in accordance with 9VAC20-60-1284.

B. Each large quantity generator of hazardous waste shall be assessed an annual fee as shown in 9VAC20-60-1285 G to be paid in accordance with 9VAC20-60-1284.

C. A hazardous waste treatment, storage, or disposal facility operating under interim status and a facility subject to an order or agreement operate by accession and shall be assessed an annual fee as described in 9VAC20-60-1285 F to be paid in accordance with 9VAC20-60-1284.

An order or agreement may be issued to the operator of a facility, a generator, or a person who is both a facility operator and a generator. If a person is issued an order or agreement whose terms allows that person to conduct an activity that is by these regulations reserved for persons operating a facility under a permit or interim status, that person shall be considered to be operating a facility subject to an order or agreement. If the order or agreement is issued to a generator and the terms of the order do not allow that person to conduct any activity that is by these regulations reserved for persons operating a facility under a permit or interim status and the person is not otherwise operating a facility at the site of generation, that person shall not be considered to be operating a facility subject to an order or agreement.

D. Annual fees are separate and accumulative. However, a facility that is assessed an annual fee as a facility shall not also be assessed a second annual fee as a large quantity generator for hazardous waste generated at that facility.

E. Anyone who operates a facility (including those described in subsections A and C of this section) or who is a large quantity generator at any time during the year shall be assessed the full annual fee amount no matter how short the period the facility is operated or how briefly the generator is a large quantity generator. A generator who is a large quantity generator episodically or provisionally (having received a provisional EPA Identification Number) shall be assessed the full annual fee for any year in which the generator was a large quantity generator. For the evaluation of facility status or of generator status, the annual year shall be considered to be from January 1 to December 31.

F. No annual fee as a facility or large quantity generator will be assessed for emergency treatment, storage, or disposal necessary for the remediation of abandoned or orphaned hazardous waste by the U.S. Environmental Protection Agency, the Virginia Department of Environmental Quality, the Virginia Department of Emergency Management, the Virginia State Police, the Virginia Department of Transportation, a U.S. Department of Defense Explosive Ordnance Disposal Team, a U.S. Army Technical Escort Unit or other federal government entities trained in explosive or munitions emergency response. No annual fee will be assessed for emergency treatment, storage, or disposal when a determination has been made by the Commonwealth that circumstances dictate expedient action to protect human health and

environmental quality.

Persons who are remediating a brownfield as defined in the Brownfield Restoration and Land Renewal Act (§10.1-1230 et seq. of the Code of Virginia) shall not be assessed an annual fee as a large quantity generator with regard to hazardous waste management activities at a waste management unit and that result from the remediation of the brownfield.

G. Discounted annual fees may be offered based on the criteria listed in 9VAC20-60-1286. An operator of a facility or a large quantity generator will be notified by the department if discounted annual fees are applicable.

**9VAC20-60-1284. Payment of annual fees.**

A. Due date. The operator of the treatment, storage, or disposal facility and each large quantity generator shall pay the correct fees to the Department of Environmental Quality. The department may bill the facility or generator for amounts due or becoming due in the immediate future. All payments are due and shall be received by the department no later than the first day of October 2004 (for the 2003 annual year), and no later than the first day of October of each succeeding year thereafter (for the preceding annual year) unless a later payment date is specified by the department in writing.

**B. Method of payment.**

1. The operator of the facility or the large quantity generator shall send a payment transmittal letter to the Department of Environmental Quality. The letter shall contain the name and address of the facility or generator, the Federal Identification Number (FIN) for the facility or generator, the amount of the payment enclosed, and the period that the payment covers. With the transmittal letter shall be payment in full for the correct fees due for the annual period. A copy of the transmittal letter only shall be maintained at the facility or the site where the hazardous waste was generated.

2. Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 10150, Richmond, VA 23240. When the department is able to accept electronic payments, payments may be submitted electronically.

C. Late payment and incomplete payments. In addition to any other provision provided by statute for the enforcement of these regulations, interest may be charged for late payments at the underpayment rate set out by the U.S. Internal Revenue Service established pursuant to §6621(a)(2) of the Internal Revenue Code. This rate is prescribed in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee may also be charged to any delinquent (over 90 days past due) account. The Department of Environmental Quality is entitled to all remedies available under the Code of Virginia in collecting any past due amount and may recover any attorney's fees and other administrative costs incurred in pursuing and collecting any past due amount.

**9VAC20-60-1285. Permit application fee and annual fee schedules.**

(The effective date of this fee schedule is July 1, 2004.)

Table 1. Permit Application Fees.

A. Transporter fees

Type of application

Transporters with terminals or other facilities within the Commonwealth.	\$140
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Other transporters.	\$210
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B. New or renewed TSD facility fees.

Elements of applications

Base fee for all facilities, including corrective action for solid waste management units.	\$16,900
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Supplementary fee for one or more land-based TSD units, including corrective action for solid waste management units.	\$39,280
---	----------

Supplementary fee for one or more incineration, boiler, or industrial furnace units (BIF).	\$25,200
--	----------

C. Major (Class 3) Permit modification fees.

Elements of Applications for Major Permit Modifications

Base fee for all major (Class 3) modifications, including major changes related to corrective action for solid waste management unit.	\$90
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Addition of new wastes.	\$2,310
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Addition of or major (Class 3) change to one or more land-based TSD units, including major change related to corrective action for land-based solid waste management units.	\$45,070
---	----------

Addition of or major (Class 3) change to one or more incineration, boiler, or industrial furnace units.	\$33,790
---	----------

Addition of or major (Class 3) change to other treatment, storage or disposal units, processes or areas and major change related to corrective action for solid waste management units that are not land based.	\$14,050
---	----------

Substantive changes (Class 2).	\$2,310
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D. Minor (Class 1) permit modification fees.

Type of application

Minor (Class 1) permit modification fee.	\$0
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E. Emergency Permit fee

Type of application

-----  
Emergency Permit fee \$2,310  
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Table 2. Annual Fees.

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F. Facilities fees.  
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Permitted treatment, storage, and disposal facility. \$2,800  
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\  
Interim status treatment, storage, and disposal facility. \$2,800  
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Facility subject to an order or agreement. \$2,800  
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G. Large quantity generator fees.  
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Large quantity generators. \$1,000  
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## Illustrative Examples

### Example 1.

The applicant is submitting a Part B application for a HWM permit for a facility consisting of several surface impoundments, a land treatment process and an ancillary tank and container storage facility. The required fee is calculated as follows:

Base Fee.	+
Supplementary fee for land-based TSD units.	+
Tank storage facility (see 9VAC20-60-1270 C 4).	=
	----
Total fee.	

### Example 2.

After a HWM facility permit has been issued to the facility described in Example 1, the owner and the operator of the facility propose to change the manufacturing process and apply for a modification to allow for an addition of several new hazardous streams to be treated in two new incinerators. The required modification fee is calculated from subsection C of this section as follows:

Base fee.	+
Addition of new wastes.	+
Addition of new incineration units.	=
	----
Total modification fee.	

The fee for a comparable new permit calculated on the basis of subsection B of this section is as follows:

Base fee.	+
Supplementary fee for land-based units.	+
Supplementary fee for incineration units.	=
Storage facility.	----
Total fee.	

### Example 3.

After a HWM facility permit has been issued to the facility described in Example 1, the owner and the operator of the facility propose to expand their container storage facility for a storage of additional new waste streams, and apply for a permit modification. The required modification fee is calculated from subsection C of this section as follows:

Base fee.	+
Addition of a new waste.	+
Fee for nonsubstantive change.	=
	----
Total modification fee.	

### **9VAC20-60-1286. Discounted annual fees for Environmental Excellence program participants.**

A. The term "Virginia Environmental Excellence Program" or "VEEP" means a voluntary program established by the department to provide public recognition and regulatory incentives to

encourage higher levels of environmental performance for program participants that develop and implement environmental management systems (EMS). The program is based on the use of environmental management systems that improve compliance, prevent pollution, and utilize other measures to improve environmental performance.

B. Participants in the VEEP shall be eligible for reduced annual fees. The VEEP includes the Environmental Enterprise (E2) level of participation and the Exemplary Environmental Enterprise (E3) level of participation.

C. Annual fee discounts will not become effective until 2005. The availability of discounts to the annual fees will be dependent upon acceptance and continued participation in the VEEP.

D. Eligibility for reduced annual fees shall be based upon the department's review of the annual report that is required to be submitted by the VEEP. The department shall review annual reports to verify that facilities continue to meet VEEP criteria prior to offering discounted annual fees.

1. The participant's annual report must reflect activities occurring through December 31 and must satisfy all reporting requirements established in the VEEP.

2. Annual reports must be received at the department's central office by April 1 of the following year to be eligible for a reduction of the annual fees.

3. The annual report must list all regulated and permitted activities included within the scope of the facility's environmental management system.

4. A participant's level of participation will be evaluated as of December 31 of each calendar year.

E. If a facility participated in the VEEP but participation in the program was terminated, discounted fees will not be available to participants until they have been reaccepted into the VEEP.

F. Participants at the E2 level of participation will be eligible to receive a discount to annual fees for up to a maximum of three years.

G. Prior to distributing bills for annual fees, the department shall calculate the discounted hazardous waste management annual fees. The total amount of facilities' discounts to hazardous waste management annual fees shall not exceed \$26,000 annually.

1. The total of a 10% discount for each participant at the E3 level of participation and a 5.0% discount for each participant at the E2 level of participation shall be calculated.

2. If the calculated total of the discounts to annual fees would exceed \$26,000, annual fees for participants at the E3 level of participation shall be discounted 5.0%, additional discounts of annual fees for participants at the E3 level of participation shall not be available, and annual fees for participants at the E2 level of participation shall not be discounted,

3. If the calculated total of the discounts to annual fees would not exceed \$26,000, annual fees for participants at the E3 level of participation shall be discounted 10%, annual fees for participants at the E2 level of participation shall be discounted 5.0%, and a larger discount may

be provided for participants at the E3 level of participation, based upon direct program costs and program revenues, not to exceed a total discount of 20%. The total of all discounts shall not exceed \$26,000. Any additional discounted fees will be calculated as follows:

(Total program revenues in the previous fiscal year minus direct program costs for the previous fiscal year) multiplied by 0.75 equals the additional discounts to be distributed to program participants. Additional discounts will be distributed to participants at the E3 level of participation in equal whole percentages.

4. If the calculated total of all facilities' discounts exceeds \$26,000, the department shall reevaluate the discounts offered to VEEP participants and shall begin the regulatory process to revise the discounts offered to VEEP participants.

#### **APPENDIX 12.1. [REPEALED]**

### **Part XIII**

#### **Standards for the Management of Specific Hazardous Wastes and Specific Types of Management Facilities [Repealed]**

#### **9VAC20-60-1290 to 9VAC20-60-1360. [Repealed]**

#### **APPENDICES 13.1 to 13.8. [REPEALED]**

### **Part XIV**

#### **Rulemaking Petitions and Procedures**

#### **9VAC20-60-1370. General.**

A. Any person affected by this chapter may petition the director to exclude a waste at a facility or to change the identification and listing of a solid or hazardous waste, subject to the provisions of this part. Any petition submitted to the director is also subject to the provisions of the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

B. The director will not accept any petition relating to delisting of hazardous wastes, equivalent testing or analytical methods. Such petitions shall be submitted to the administrator in accordance with 40 CFR 260.21.

C. Each petition shall be submitted to the department by certified mail and shall include, in addition to any other provisions required by this part, at least the following:

1. The petitioner's name and address;
2. A statement of the petitioner's interest in the proposed action;
3. A description of the proposed action;
4. A statement of the need and justification for the proposed action, including any supporting tests, studies or other information.

## **9VAC20-60-1380. Changes to identification and listing of hazardous wastes.**

### **A. General changes.**

1. The administrator may from time to time add or delete wastes listed in Subpart D of 40 CFR Part 261.
2. The petitions to exclude wastes listed in Subpart D of 40 CFR Part 261 which are subject to federal jurisdiction shall be addressed directly to the administrator in accordance with the requirements contained in Subpart C of 40 CFR Part 260.

B. A person whose wastes were delisted as a result of a successful petition to the administrator shall provide to the department:

1. The petitioner's name and address;
2. A copy of the petition to the director; and
3. A copy of the administrator's decision.

A person whose wastes were delisted as a result of a successful petition to the administrator may petition the director for a variance from these regulations to allow the application of the delisting to hazardous waste management within the Commonwealth. The director or his designee will process the petition in accordance with 9VAC20-60-1420 B. (Note: It is usual that delistings by the administrator are incorporated into the Commonwealth's regulation during the next rulemaking by the board; the variance would allow application of the delisting during the interim period before the regulations are amended.)

## **9VAC20-60-1390. Changes in classifications as a solid waste.**

### **A. Variances.**

#### **1. Applicability.**

- a. A person who recycles waste that is managed entirely within the Commonwealth may petition the director to exclude the waste at a particular site from the classification as the solid waste (Parts I and III). The conditions under which a petition for a variance will be accepted are shown in subdivision 2 of this subsection. The wastes excluded under such petitions may still, however, remain classified as a solid waste for the purposes of other regulations issued by the Virginia Waste Management Board or other agencies of the Commonwealth.
- b. A person who generated wastes at a generating site in Virginia and whose waste is subject to federal jurisdiction (e.g., the waste is transported across state boundaries) shall first obtain a favorable decision from the administrator in accordance with Subpart C, 40 CFR Part 260, before his waste may be considered for a variance by the director.
- c. A person who recycles materials from a generating site outside the Commonwealth and who causes them to be brought into the Commonwealth for recycling shall first obtain a favorable decision from the administrator in accordance with Subpart C, 40 CFR Part 260, before the waste may be considered for a variance by the director.

d. A person who received a favorable decision from the administrator in the response to a petition for variance or a person whose wastes were delisted as a result of a successful petition to the administrator shall provide a notification to the department containing the following information: (i) the petitioner's name and address and (ii) a copy of the administrator's decision.

2. Conditions for a variance. In accordance with the standards and criteria in subsection B of this section and the procedures in 9VAC20-60-1420 A, the director may determine on a case-by-case basis that the following recycled materials are not solid wastes:

a. Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in Part I).

b. Materials that are reclaimed and then reused within the original primary production process in which they were generated; and

c. Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

B. Standards and criteria for variances.

1. The director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed on an annual basis by filing a new application. The director's decision will be based on the following criteria:

a. The manner in which the material is expected to be recycled, and when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangement for recycling);

b. The reason that the applicant has accumulated the material for one or more years without recycling 75% of the volume accumulated at the beginning of the year;

c. The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

d. The extent to which the material is handled to minimize loss; and

e. Other relevant factors.

2. The director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

a. How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

- b. The prevalence of the practice on an industry-wide basis;
  - c. The extent to which the material is handled before reclamation to minimize loss;
  - d. The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;
  - e. The location of the reclamation operation in relation to the production process;
  - f. Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;
  - g. Whether the person who generates the material also reclaims it; and
  - h. Other relevant factors.
3. The director may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:
- a. The degree of processing the material has undergone and the degree of further processing that is required;
  - b. The value of the material after it has been reclaimed;
  - c. The degree to which the reclaimed material is like an analogous raw material;
  - d. The extent to which an end market for the reclaimed material is guaranteed;
  - e. The extent to which the reclaimed material is handled to minimize loss; and
  - f. Other relevant factors.

**9VAC20-60-1400. Changes in process classification.**

A. Variance to be classified as a boiler. In accordance with the standards and criteria in the definition of "boiler" and the procedures in 9VAC20-60-1420 B or 9VAC20-60-1420 C the director may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler after considering the following criteria:

- 1. The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;
- 2. The extent to which the combustion chamber and energy recovery equipment are of integral design;
- 3. The efficiency of energy recovery, calculated in terms of the recovered energy compared with

the thermal value of the fuel;

4. The extent to which exported energy is utilized;

5. The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and

6. Other factors, as appropriate.

B. [Reserved.]

**9VAC20-60-1410. Changes in the required management procedures.**

A. Reclamation of precious metals. The director may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in 40 CFR 261.6(a)(2)(iii) should be regulated under 40 CFR 261.6(b) and 40 CFR 261.6(c) rather than under provisions of 9VAC20-60-266. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the director will consider the following factors:

1. The types of materials accumulated or stored and the amounts accumulated or stored;

2. The method of accumulation or storage;

3. The length of time the materials have been accumulated or stored before being reclaimed;

4. Whether any contaminants are being released into the environment, or are likely to be so released; and

5. Other relevant factors. The procedures for this decision are set forth in 9VAC20-60-1420 C.

B. Variance from containment requirements for tanks.

1. The owner or operator may obtain a variance from the requirements of 40 CFR 265.193 or 40 CFR 264.193 if the director finds, as a result of a demonstration by the owner or operator, either:

a. That alternative design and operating practices, together with location characteristics, will prevent the migration of hazardous waste or hazardous constituents into the ground water or surface water at least as effectively as secondary containment during the active life of the tank system; or

b. That in the event of a release that does migrate to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment.

2. New underground tank systems may not, per a demonstration in accordance with subdivision 5 of this subsection, be exempted from the secondary containment requirements of this section.

3. Application for a variance as allowed in subdivision 1 of this subsection does not waive compliance with the requirements of 40 CFR 265.193 or 40 CFR 264.193 for new tank systems.

4. In deciding whether to grant a variance based on a demonstration of equivalent protection of ground water and surface water, the director will consider:

- a. The nature and quantity of the wastes;
- b. The proposed alternate design and operation;
- c. The hydrogeologic setting of the facility, including the thickness of soils between the tank system and groundwater; and
- d. All other factors that would influence the quality and mobility of the hazardous waste constituents and the potential for them to migrate to ground water or surface water.

5. In deciding whether to grant a variance, based on a demonstration of no substantial present or potential hazard, the director will consider:

a. The potential adverse effects on groundwater, surface water, and land quality taking into account:

- (1) The physical and chemical characteristics of the waste in the tank system, including its potential for migration;
- (2) The hydrogeological characteristics of the facility and surrounding land;
- (3) The potential for health risks caused by human exposure to waste constituents;
- (4) The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and
- (5) The persistence and permanence of the potential adverse effects;

b. The potential adverse effects of a release on ground water quality, taking into account:

- (1) The quantity and quality of ground water and the direction of ground water flow;
- (2) The proximity and withdrawal rates of water in the area;
- (3) The current and future uses of ground water in the area; and
- (4) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the ground water quality;

c. The potential adverse effects of a release on surface water quality, taking into account:

- (1) The quantity and quality of ground water and the direction of ground water flow;
- (2) The patterns of rainfall in the region;
- (3) The proximity of the tank system to surface waters;
- (4) The current and future uses of surface waters in the area any water quality standards established for those surface waters; and

(5) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality; and

d. The potential adverse effects of a release on the land surrounding the tank system, taking into account:

(1) The patterns of rainfall in the region; and

(2) The current and future uses of the surrounding land.

6. The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of subdivision 4 of this subsection at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), shall:

a. Comply with the requirements of 40 CFR 265.196 or 40 CFR 264.196, except 40 CFR 265.196(d) or 40 CFR 264.196(d);

b. Decontaminate or remove contaminated soil to the extent necessary to:

(1) Enable the tank system, for which the variance was granted, to resume operation with the capability for the detection of and response to releases at least equivalent to the capability it had prior to the release; and

(2) Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water; and

c. If contaminated soil cannot be removed or decontaminated in accordance with subdivision 6 b of this subsection, comply with the requirements of 40 CFR 265.197(b) or 40 CFR 264.197(b), as applicable;

7. The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of subdivision 4 of this subsection, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), shall:

a. Comply with the requirements of 40 CFR 265.196(a) through 40 CFR 265.196(d) or 40 CFR 264.196(a) through 40 CFR 264.196(d);

b. Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed, or if ground water has been contaminated, the owner or operator shall comply with the requirements of 40 CFR 265.197(b) or 40 CFR 264.197(b); and

c. If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of 40 CFR 265.193(a) through 40 CFR 265.193(f) or 40 CFR 264.193(a) through 40 CFR 264.193(f) or reapply for a variance from secondary containment and meet the requirements for new tank systems in 40 CFR 265.192 or 40 CFR 264.192 if the tank system is replaced.

The owner or operator shall comply with these requirements even if contaminated soil can be decontaminated or removed, and ground water or surface water has not been contaminated.

C. Petitions to allow land disposal of a waste prohibited under 9VAC20-60-268.

1. Any person seeking an exemption from a prohibition under 9VAC20-60-268 for the disposal of a restricted hazardous waste in a particular unit or units shall submit a petition to the EPA administrator in accordance with 40 CFR 268.6.

2. (Reserved.)

#### **9VAC20-60-1420. Administrative procedures.**

A. Procedures for variances to be classified as a boiler. The director will use the following procedures in evaluating applications for variances to classify particular enclosed controlled flame combustion devices as boilers:

1. The applicant must apply to the department for the variance. The application must address the relevant criteria contained in 9VAC20-60-1400.

2. The director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the applicant is located. The director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The director will issue a final decision after receipt of comments and after the hearing (if any).

B. Variances. The director will use the following procedures in evaluating applications for variances submitted under 9VAC20-60-1380 B, 9VAC20-60-1390 and 9VAC20-60-1400.

1. The applicant shall apply to the department. The application shall address the relevant criteria contained in 9VAC20-60-1380 B, 9VAC20-60-1390 and 9VAC20-60-1400.

2. The director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the applicant is located. The director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The director will issue a final decision after receipt of comments and after the hearing (if any), and will publish it in the newspaper in the locality where the applicant is located.

C. Changes in management procedures.

1. Recycling activities. In determining whether to regulate recycling activities in a manner differing from procedures described in 40 CFR 261.6(a)(2)(iii), the director will fulfill all the requirements of Article 3 (§2.2-4018 et seq.) of the Administrative Process Act. In addition to the process required by the APA, the director will:

a. If a generator is accumulating the waste, issue a notice setting forth the factual basis for the decision and stating that the person shall comply with applicable requirements of 9VAC20-60-

262. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the director will hold a public hearing. The director will provide notice of the hearing to the public and allow public participation at the hearing. The director will issue a final order after the hearing stating whether or not compliance with 9VAC20—60--262 is required. The order becomes effective in 30 days, unless the director specifies a later date or unless review under Article 5 (§2.2-4025 et seq.) of the Administrative Process Act is requested.

b. If the person is accumulating the recyclable material at a storage facility, issue a notice stating that the person shall obtain a permit in accordance with all applicable provisions of Part III (9VAC20-60-124 et seq.), 9VAC20-60-270, and Part XII (9VAC20-60-1260 et seq.) of this chapter. The owner or operator of the facility shall apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the director's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the director's determination. The questions of whether the director's decision was proper will remain open for consideration during the public comment period discussed under 9VAC20-60-1210 and in any subsequent hearing.

2. Variance from secondary containment. The following procedures shall be followed in order to request a variance from secondary containment:

a. The department shall be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in 40 CFR 265.193(g), (or 40 CFR 264.195(g)), and 9VAC20-60-1410 B according to the following schedule:

(1) For existing tank systems, at least 24 months prior to the date that secondary containment shall be provided in accordance with 40 CFR 265.193(a) or 40 CFR 264.193(a); and

(2) For new tank systems, at least 30 days prior to entering into a contract for installation of the tank system.

b. As part of the notification, the owner or operator shall also submit to the department a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration shall address each of the factors listed in 9VAC20-60-1410 B 4 or 9VAC20-60-1410 B 5.

c. The demonstration for a variance shall be completed and submitted to the department within 180 days after notifying the department of intent to conduct the demonstration.

d. In case of facilities regulated under 9VAC20-60-265:

(1) The director will inform the public, through a newspaper notice, of the availability of the demonstration for a variance. The notice shall be placed in a daily or weekly major local newspaper of general circulation and shall provide at least 30 days from the date of the notice for the public to review and comment on the demonstration for a variance. The director also will hold a public hearing, in response to a request or at his own discretion, whenever such a hearing

might clarify one or more issues concerning the demonstration for a variance. Public notice of the hearing will be given at least 30 days prior to the date of the hearing and may be given at the same time as notice of the opportunity for the public to review and comment on the demonstration. These two notices may be combined.

(2) The director will approve or disapprove the request for a variance within 90 days of receipt of the demonstration from the owner or operator and will notify in writing the owner or operator and each person who submitted written comments or requested notice of the variance decision. If the demonstration for a variance is incomplete or does not include sufficient information, the 90-day time period will begin when the department receives a complete demonstration, including all information necessary to make a final determination. If the public comment period in subdivision 2 d (1) of this subsection is extended, the 90-day time period will be similarly extended.

e. In case of facilities regulated under 9VAC20-60-264, if a variance is granted to the permittee, the director will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

#### **9VAC20-60-1430. Petitions to include additional hazardous wastes.**

##### **A. General.**

1. Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of 9VAC20-60-273 and Part XVI (9VAC20-60-1495 et seq.) of this chapter may petition for a regulatory amendment under this part.

2. To be successful, the petitioner shall demonstrate to the satisfaction of the director that regulation under the universal waste regulations of 9VAC20-60-273 and Part XVI of this chapter:

- a. Is appropriate for the waste or category of waste;
- b. Will improve management practices for the waste or category of waste; and
- c. Will improve implementation of the hazardous waste program.

The petition shall include the information required by 9VAC20-60-1370 C. The petition should also address as many of the factors listed in subsection B of this section as are appropriate for the waste or category of waste addressed in the petition.

3. The director will grant or deny a petition using the factors listed in subsection B of this section. The decision will be based on the weight of evidence showing that regulation under 9VAC20-60-273 and Part XVI of this chapter is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

4. The director may request additional information needed to evaluate the merits of the petition.

5. If the director adds new hazardous wastes to the list contained in 9VAC20-60-273 and in Part XVI of these regulations, management of these wastes under the universal waste regulations would only be allowed within the Commonwealth or other states that have added those particular

wastes to their regulations. Shipments of such wastes to a state where universal waste standards do not apply to that waste would have to comply with the full hazardous waste requirements of Parts I through XV of this chapter.

B. Factors to consider.

1. The waste or category of waste, as generated by a wide variety of generators, is listed in Subpart D of 40 CFR Part 261, or (if not listed) a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in Subpart C of 40 CFR Part 261. (When a characteristic waste is added to the universal waste regulations of 9VAC20-60-273 and Part XVI of this chapter by using a generic name to identify the waste category (e.g., batteries), the definition of universal waste will be amended to include only the hazardous waste portion of the waste category (e.g., hazardous waste batteries). Thus, only the portion of the waste stream that does exhibit one or more characteristics (i.e., is hazardous waste) is subject to the universal waste regulations of 9VAC20-60-273 and Part XVI of this chapter;
2. The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large industrial facilities);
3. The waste or category of waste is generated by a large number of generators (e.g., more than 1,000 nationally) and is frequently generated in relatively small quantities by each generator;
4. Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;
5. The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (e.g., waste management requirements appropriate to be added to 9VAC20-60-273 or Part XVI of this chapter; and applicable requirements of the Virginia Regulations Governing the Transportation of Hazardous Materials, 9VAC20-110-10 et seq.) would be protective of human health and the environment during accumulation and transport;
6. Regulation of the waste or category of waste under 9VAC20-60-273 will increase the likelihood that the waste will be diverted from nonhazardous waste management systems (e.g., the municipal waste stream, nonhazardous industrial or commercial waste stream, municipal sewer or stormwater systems) to recycling, treatment, or disposal in compliance with the Virginia Hazardous Waste Management Regulations;
7. Regulation of the waste or category of waste under 9VAC20-60-273 will improve implementation of and compliance with the hazardous waste regulatory program; and
8. Such other factors as may be appropriate.

**9VAC20-60-1435. Petitions for site-specific variance from the applicable treatment standard under the land disposal restrictions.**

The director may approve an application for site-specific variance from the applicable treatment standards under the land disposal restriction using the criteria and procedures established in 9VAC20-60-1370 and 40 CFR 268.44.

#### **APPENDIX 14.1. [REPEALED]**

### **Part XV**

#### **Land Disposal Restrictions [Repealed]**

#### **9VAC20-60-1440 to 9VAC20-60-1480. [Repealed]**

#### **APPENDICES 15.1 to 15.10. [REPEALED]**

### **Part XVI**

#### **Additional Universal Waste Management Provisions**

#### **9VAC20-60-1495. General provisions.**

A. Hazardous wastes defined to be universal wastes in the texts incorporated by reference at 9VAC20-60-260 and 9VAC20-60-273 and hazardous wastes as defined in 9VAC20-60-1505 shall be universal wastes for the purposes of these regulations, the Virginia Hazardous Waste Management Regulations.

B. A universal waste may be managed under the general provisions as hazardous waste or under the special provisions as universal waste. The generator shall determine under which provisions the waste shall be managed and subsequent management shall be consistent with that determination by the generator.

#### **9VAC20-60-1505. Additional universal wastes.**

Note: At this time, there are no universal wastes that are not also universal wastes under 40 CFR Part 273 or 9VAC20-60-273 B.

### **FORMS**

Application for a Transporter Permit, Form 7.1 (rev. 12/01).

Transporter Annual Report, Form 7.2-1 (rev. 12/01).

Intra-Commonwealth Shipments, Form 7.2-2 (rev. 12/01).

Shipments to Other States, Form 7.2-3 (rev. 12/01).

Shipments into the Commonwealth, Form 7.2-4 (rev. 12/01).

Shipments to Foreign Facilities, Form 7.2-5 (rev. 12/01).

Title 10.1, Chapter 14  
Virginia Waste Management Act

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General Provisions

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10.1-1407.	[Repealed].
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10.1-1413.1.	Virginia Waste information and assessment program.

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Article 3

## Litter Control and Recycling

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10.1-1418.3.	Liability for large waste tire pile fires; exclusions.
10.1-1418.4.	Removal of waste tire piles; cost recovery; right of entry.
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Article 3.5.  
Cathode Ray Tubes Recycling

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Article 4.  
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10.1-1426.	Permits required; waiver of requirements; reports; conditional permits.
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- 10.1-1428. Financial responsibility for abandoned facilities; penalties.  
10.1-1429. Notice of release of hazardous substance.

Article 4.1.  
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10.1-1429.1. - 10.1-1429.1 Repealed by Chapter 378 of 2002 Acts of Assembly (See §10.1-1230 et seq. for Brownfield Restoration and Land Renewal Act).

Article 4.2.  
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10.1-1429.4. - Repealed by Chapter 378 of 2002 Acts of Assembly (See § 10.1-1230 et seq. for Brownfield Restoration and Land Renewal Act).

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- 10.1-1430. Authority of Governor to enter into agreements with federal government; effect on federal licenses.  
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## Title 10.1 - Chapter 14 Virginia Waste Management Act

### § 10.1-1400. Definitions.

As used in this chapter unless the context requires a different meaning:

"Applicant" means any and all persons seeking or holding a permit required under this chapter.

"Board" means the Virginia Waste Management Board.

"Composting" means the manipulation of the natural aerobic process of decomposition of organic materials to increase the rate of decomposition.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Disclosure statement" means a sworn statement or affirmation, in such form as may be required by the Director, which includes:

1. The full name, business address, and social security number of all key personnel;
2. The full name and business address of any entity, other than a natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of five percent or more;
3. A description of the business experience of all key personnel listed in the disclosure statement;
4. A listing of all permits or licenses required for the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;
5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any sort by any state, federal or local authority, within the past 10 years, which are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within 10 years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary;

theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1; racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth which have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past 10 years, in connection with the applicant's collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste;

7. Any other information about the applicant and the key personnel that the Director may require that reasonably relates to the qualifications and ability of the key personnel or the applicant to lawfully and competently operate a solid waste management facility in Virginia; and

8. The full name and business address of any member of the local governing body or planning commission in which the solid waste management facility is located or proposed to be located, who holds an equity interest in the facility.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"Equity" includes both legal and equitable interests.

"Federal acts" means any act of Congress providing for waste management and regulations promulgated thereunder.

"Hazardous material" means a substance or material in a form or quantity which may pose an unreasonable risk to health, safety or property when transported, and which the Secretary of Transportation of the United States has so designated by regulation or order.

"Hazardous substance" means a substance listed under United States Public Law 96-510, entitled the Comprehensive Environmental Response Compensation and Liability Act.

"Hazardous waste" means a solid waste or combination of solid waste which, because of its

quantity, concentration or physical, chemical or infectious characteristics, may:

1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or
2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

"Hazardous waste generation" means the act or process of producing hazardous waste.

"Household hazardous waste" means any waste material derived from households (including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas) which, except for the fact that it is derived from a household, would be classified as a hazardous waste, including but not limited to, nickel, cadmium, mercuric oxide, manganese, zinc-carbon or lead batteries; solvent-based paint, paint thinner, paint strippers, or other paint solvents; any product containing trichloroethylene, toxic art supplies, used motor oil and unusable gasoline or kerosene, fluorescent or high intensity light bulbs, ammunition, fireworks, banned pesticides, or restricted-use pesticides as defined in § 3.1-249.27. All empty household product containers and any household products in legal distribution, storage or use shall not be considered household hazardous waste.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the Director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of five percent or more of the equity or debt of the applicant. If any holder of five percent or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Securities Exchange Act

of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage of such hazardous waste.

"Mixed radioactive waste" means radioactive waste that contains a substance which renders the mixture a hazardous waste.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped or spilled so as to create a nuisance or present a threat of a release of harmful substances into the environment or present a hazard to human health.

"Person" includes an individual, corporation, partnership, association, a governmental body, a municipal corporation or any other legal entity.

"Radioactive waste" or "nuclear waste" includes:

1. "Low-level radioactive waste" material that:
  - a. Is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in section 11e (2) of the Atomic Energy Act of 1954 (42 U.S.C. § 2014 (e) (2)); and
  - b. The Nuclear Regulatory Commission, consistent with existing law, classifies as low-level radioactive waste; or
2. "High-level radioactive waste" which means:
  - a. The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and
  - b. Other highly radioactive material that the Nuclear Regulatory Commission, consistent with existing law, determines by rule requires permanent isolation.

"Recycling residue" means the (i) nonmetallic substances, including but not limited to plastic, rubber, and insulation, which remain after a shredder has separated for purposes of recycling the ferrous and nonferrous metal from a motor vehicle, appliance, or other discarded metallic item and (ii) organic waste remaining after removal of metals, glass, plastics and

paper which are to be recycled as part of a resource recovery process for municipal solid waste resulting in the production of a refuse derived fuel.

"Resource conservation" means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption and utilization of recovered resources.

"Resource recovery" means the recovery of material or energy from solid waste.

"Resource recovery system" means a solid waste management system which provides for collection, separation, recycling and recovery of solid wastes, including disposal of nonrecoverable waste residues.

"Sanitary landfill" means a disposal facility for solid waste so located, designed and operated that it does not pose a substantial present or potential hazard to human health or the environment, including pollution of air, land, surface water or ground water.

"Sludge" means any solid, semisolid or liquid wastes with similar characteristics and effects generated from a public, municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, air pollution control facility or any other waste producing facility.

"Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or community activities but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, or (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended.

"Solid waste management facility" means a site used for planned treating, long term storage, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Transport" or "transportation" means any movement of property and any packing, loading, unloading or storage incidental thereto.

"Treatment" means any method, technique or process, including incineration or neutralization, designed to change the physical, chemical or biological character or composition of any waste to neutralize it or to render it less hazardous or nonhazardous, safer for transport, amenable to recovery or storage or reduced in volume.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land-clearing activities and includes, but is not limited to, leaves, grass trimmings, and woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps.

"Waste" means any solid, hazardous or radioactive waste as defined in this section.

"Waste management" means the collection, source separation, storage, transportation, transfer, processing, treatment and disposal of waste or resource recovery.

"Yard waste" means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed six inches in diameter.

§ 10.1-1401. Virginia Waste Management Board continued.

A. The Virginia Waste Management Board is continued and shall consist of seven Virginia residents appointed by the Governor. Notwithstanding any other provision of this section relating to Board membership, the qualifications for Board membership shall not be more strict than those which may be required by federal statute or regulations of the United States Environmental Protection Agency. Upon initial appointment, three members shall be appointed for four-year terms, two for three-year terms, and two for two-year terms. Thereafter, all members shall be appointed for terms of four years each. Vacancies occurring other than by expiration of a term shall be filled by the Governor for the unexpired portion of the term.

B. The Board shall adopt rules and procedures for the conduct of its business.

C. The Board shall elect a chairman from among its members.

D. A quorum shall consist of four members. The decision of a majority of those present and voting shall constitute a decision of the Board; however, a vote of the majority of the Board membership is required to constitute a final decision on certification of site approval. Meetings may be held at any time or place determined by the Board or upon call of the chairman or upon written request of any two members. All members shall be notified of the time and place of any meeting at least five days in advance of the meeting.

§ 10.1-1402. Powers and duties of the Board.

The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. Supervise and control waste management activities in the Commonwealth.
2. Consult, advise and coordinate with the Governor, the Secretary, the General Assembly, and other state and federal agencies for the purpose of implementing this chapter and the federal acts.
3. Provide technical assistance and advice concerning all aspects of waste management.
4. Develop and keep current state waste management plans and provide technical assistance, advice and other aid for the development and implementation of local and regional waste management plans.
5. Promote the development of resource conservation and resource recovery systems and provide technical assistance and advice on resource conservation, resource recovery and resource recovery systems.
6. Collect data necessary to conduct the state waste programs, including data on the identification of and amounts of waste generated, transported, stored, treated or disposed, and resource recovery.
7. Require any person who generates, collects, transports, stores or provides treatment or disposal of a hazardous waste to maintain records, manifests and reporting systems required pursuant to federal statute or regulation.
8. Designate, in accordance with criteria and listings identified under federal statute or regulation, classes, types or lists of waste that it deems to be hazardous.
9. Consult and coordinate with the heads of appropriate state and federal agencies, independent regulatory agencies and other governmental instrumentalities for the purpose of achieving maximum effectiveness and enforcement of this chapter while imposing the least burden of duplicative requirements on those persons subject to the provisions of this chapter.
10. Apply for federal funds and transmit such funds to appropriate persons.
11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the

standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.

12. Subject to the approval of the Governor, acquire by purchase, exercise of the right of eminent domain as provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, grant, gift, devise or otherwise, the fee simple title to any lands, selected in the discretion of the Board as constituting necessary and appropriate sites to be used for the management of hazardous waste as defined in this chapter, including lands adjacent to the site as the Board may deem necessary or suitable for restricted areas. In all instances the Board shall dedicate lands so acquired in perpetuity to such purposes. In its selection of a site pursuant to this subdivision, the Board shall consider the appropriateness of any state-owned property for a disposal site in accordance with the criteria for selection of a hazardous waste management site.

13. Assume responsibility for the perpetual custody and maintenance of any hazardous waste management facilities.

14. Collect, from any person operating or using a hazardous waste management facility, fees sufficient to finance such perpetual custody and maintenance due to that facility as may be necessary. All fees received by the Board pursuant to this subdivision shall be used exclusively to satisfy the responsibilities assumed by the Board for the perpetual custody and maintenance of hazardous waste management facilities.

15a. Collect, from any person operating or proposing to operate a hazardous waste treatment, storage or disposal facility or any person transporting hazardous waste, permit fees sufficient to defray only costs related to the issuance of permits as required in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to implement this subdivision. All fees received by the Board pursuant to this subdivision shall be used exclusively for the hazardous waste management program set forth herein.

b. Collect fees from large quantity generators of hazardous wastes.

16. Collect, from any person operating or proposing to operate a sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste: (i) permit application fees sufficient to defray only costs related to the issuance, reissuance, amendment or modification of permits as required in

this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to issue, reissue, amend or modify such permits and (ii) annual fees established pursuant to 10.1-1402.1:1. All such fees received by the Board shall be used exclusively for the solid waste management program set forth herein. The Board shall establish a schedule of fees by regulation as provided in §§ 10.1-1402.1, 10.1-1402.2 and 10.1-1402.3.

17. Issue, deny, amend and revoke certification of site suitability for hazardous waste facilities in accordance with this chapter.

18. Make separate orders and regulations it deems necessary to meet any emergency to protect public health, natural resources and the environment from the release or imminent threat of release of waste.

19. Take actions to contain or clean up sites or to issue orders to require cleanup of sites where solid or hazardous waste, or other substances within the jurisdiction of the Board, have been improperly managed and to institute legal proceedings to recover the costs of the containment or clean-up activities from the responsible parties.

20. Collect, hold, manage and disburse funds received for violations of solid and hazardous waste laws and regulations or court orders pertaining thereto pursuant to subdivision 19 of this section for the purpose of responding to solid or hazardous waste incidents and clean-up of sites that have been improperly managed, including sites eligible for a joint federal and state remedial project under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, and for investigations to identify parties responsible for such mismanagement.

21. Abate hazards and nuisances dangerous to public health, safety or the environment, both emergency and otherwise, created by the improper disposal, treatment, storage, transportation or management of substances within the jurisdiction of the Board.

22. Notwithstanding any other provision of law to the contrary, regulate the management of mixed radioactive waste.

§ 10.1-1402.01. Further duties of Board; localities particularly affected.

After June 30, 1994, before promulgating any regulation under consideration or granting any

variance to an existing regulation, or issuing any treatment, storage, or disposal permit, except for an emergency permit, if the Board finds that there are localities particularly affected by the regulation, variance or permit, the Board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least thirty days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall include information on the location and type of waste treated, stored or disposed.

2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the Board for at least fifteen days after any hearing on the regulation, variance, or permit, unless the Board votes to shorten the period.

For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material environmental impact which would not be experienced by other localities. For the purposes of this section, the transportation of waste shall not constitute a material environmental impact.

§ 10.1-1402.1. Permit fee regulations.

Regulations promulgated by the Board which establish a permit fee assessment and collection system pursuant to subdivisions 15a, 15b and 16 of § 10.1-1402 shall be governed by the following:

1. Permit fees charged an applicant shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions. No fees shall be charged for minor modifications or minor amendments to such permits. For purposes of this subdivision, "minor permit modifications" or "minor amendments" means specific types of changes, defined by the Board, that are made to keep the permit current with routine changes to the facility or its operation and that do not require extensive review. A minor permit modification or amendment does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

2. When promulgating regulations establishing permit fees, the Board shall take into account the permit fees

charged in neighboring states and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage.

3. On January 1, 1993, and January 1 of every even-numbered year thereafter, the Board shall evaluate the implementation of the permit fee program and provide this evaluation in writing to the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Conservation and Natural Resources, and Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

4. Fees collected pursuant to subdivisions 15a, 15b or 16 of § 10.1-1402 shall not supplant or reduce in any way the general fund appropriation to the Board.

5. These permit fees shall be collected in order to recover a portion of the agency's costs associated with the (i) processing of an application to issue, reissue, amend or modify permits which the Board has authority to issue for the purpose of more efficiently and expeditiously processing and maintaining permits and (ii) the inspections necessary to assure the compliance of large quantity generators of hazardous waste. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

§ 10.1-1402.1:1. Annual fees for nonhazardous solid waste management facilities.

A. In addition to the permit fees assessed and collected pursuant to § 10.1-1402.1, the Board shall collect an annual fee from any person operating a sanitary landfill or other facility permitted under this chapter for the disposal, storage, or treatment of nonhazardous solid waste. The fees shall be exempt from statewide indirect cost charged and assessed by the Department of Accounts. Annual fees shall reflect the time and complexity of inspecting and monitoring the different categories of facilities. Any annual fee that is based on volume shall be calculated using the tonnage reported by each facility pursuant to § 10.1-1413.1 for the preceding year. The annual fee shall be assessed as follows:

1. Noncaptive industrial landfills \$8,000
2. Construction and demolition debris landfills \$4,000

3. Sanitary landfills shall be assessed a fee based on their annual tonnage as follows:

Annual Tonnage	Base Fee	Fee per ton Over base fee
Up to 10,000	\$ 1,000	
10,001 to 100,000	\$ 1,000	\$.09
100,001 to 250,000	\$10,000	\$.09
250,001 to 500,000	\$23,500	\$.075
500,001 to 1,000,000	\$42,250	\$.06
1,000,001 to 1,500,000	\$72,250	\$.05
Over 1,500,000	\$97,250	\$.04

4. Incinerators and energy recovery facilities shall be assessed a fee based upon their annual tonnage as follows:

Annual Tonnage	Fee
10,000 or less	\$2,000
10,001 to 50,000	\$3,000
50,001 to 100,000	\$4,000
100,001 or more	\$5,000

5. Other types of facilities shall be assessed an annual fee as follows:

Composting	\$ 500
Regulated medical waste	\$1,000
Materials recovery	\$2,000
Transfer station	\$2,000
Facilities in post-closure care	\$ 500

B. The Board shall by regulation prescribe the manner and schedule for remitting fees imposed by this section and may allow for the quarterly payment of any such fees. The payment of any annual fee amounts owed shall be deferred until January 1, 2005, if the person subject to those fees submits a written request to the Department prior to October 1, 2004. The selection of this deferred payment option shall not reduce the amount owed.

C. The regulation shall include provisions allowing the Director to waive or reduce fees assessed during a state of emergency or for waste resulting from emergency response actions.

D. The Board may promulgate regulations establishing a schedule of reduced permit fees for facilities that have established a record of compliance with the terms and requirements of their permit and shall establish criteria, by regulation, to provide for reductions in the annual fee amount assessed for facilities based upon acceptance into the Department's programs to recognize environmental performance.

E. The operator of a facility owned by a private entity and subject to any fee imposed pursuant to this section shall collect such fee as a surcharge on any fee

schedule established pursuant to law, ordinance, resolution or contract for solid waste processing or disposal operations at the facility.

§ 10.1-1402.2. Permit Program Fund established; use of moneys.

A. There is hereby established a special, nonreverting fund in the state treasury to be known as the Virginia Waste Management Board Permit Program Fund, hereafter referred to as the Fund. Notwithstanding the provisions of § 2.1-180, all moneys collected pursuant to subdivision 16 of § 10.1-1402 shall be paid into the state treasury to the credit of the Fund.

B. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it.

C. The Board is authorized and empowered to release moneys from the Fund, on warrants issued by the State Comptroller, for the purposes of recovering portions of the costs of processing applications under subdivision 16 of § 10.1-1402 under the direction of the Director.

D. An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller and furnished upon request to the Governor or the General Assembly.

§ 10.1-1402.3. Conformance with federal requirements.

Notwithstanding the provisions of this article, any fee system developed by the Board may be modified by regulation promulgated by the Board, as may be necessary to conform with the requirements of federal acts and any regulations promulgated thereunder. Any modification imposed under this section shall be submitted to the members of the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Conservation and Natural Resources, and Finance.

§ 10.1-1403. Advisory committees.

The Governor shall appoint such advisory committees as he may deem necessary to aid in the development of an effective waste management program.

§ 10.1-1404. Department continued; general powers.

A. The Department of Waste Management is continued. The Department shall be headed by a

Director, who shall be appointed by the Governor to serve at his pleasure for a term coincident with his own or until a successor shall be appointed and qualified.

B. In addition to the powers designated elsewhere in this chapter, the Department shall have the power to:

1. Administer the policies and regulations established by the Board pursuant to this chapter;

2. Employ such personnel as may be required to carry out the purposes of this chapter;

3. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other state agencies and governmental subdivisions of the Commonwealth; and

4. Provide upon request and without charge, technical assistance to local governing bodies regarding stockpiling of tires pursuant to its authority in this chapter to promote resource conservation and resource recovery systems. The governing body of any county, city or town may adopt an ordinance regulating the stockpiling of tires, including but not limited to, the location of such stockpiles and the number of tires to be deposited at the site.

§ 10.1-1405. Powers and duties of Director.

A. The Director, under the direction and control of the Secretary of Natural Resources, shall exercise such powers and perform such duties as are conferred or imposed upon him by law and shall perform any other duties required of him by the Governor or the Board.

B. In addition to the other responsibilities set forth herein, the Director shall carry out management and supervisory responsibilities in accordance with the regulations and policies of the Board. In no event shall the Director have the authority to promulgate any final regulation.

The Director shall be vested with all the authority of the Board when it is not in session, subject to such regulations as may be prescribed by the Board.

C. The Director shall serve as the liaison with the United States Department of Energy on matters concerning the siting of high-level radioactive waste repositories, pursuant to the terms of the Nuclear Waste Policy Act of 1982.

D. The Director shall obtain a criminal records check pursuant to § 19.2-389 of key personnel listed in the disclosure statement when the Director determines, in

his sole discretion, that such a records check will serve the purposes of this chapter.

§ 10.1-1406. Exemptions from liability; expedited settlements.

A. No person shall be liable under the provisions of subdivision 19 of § 10.1-1402 for cleanup or to reimburse the Virginia Environmental Emergency Response Fund if he can establish by a preponderance of the evidence that the violation and the damages resulting therefrom were caused solely by:

1. An act of God;
2. An act of war;
3. An act or omission of a third party other than an employee or agent of the defendant, or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (i) he exercised due care with respect to the hazardous waste or hazardous substance concerned, taking into consideration the characteristics of such hazardous waste or hazardous substance, in light of all relevant facts and circumstances and (ii) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or
4. Any combination of subdivisions 1 through 3 of this section. For purposes of this section, the term "contractual arrangement" shall have the meaning ascribed to it in 42 U.S.C. § 9601(35).

B. The Board may, consistent with programs developed under the federal acts, expedite a determination to limit the liability of innocent landowners, de minimis contributors or others who have grounds to claim limited responsibility for a containment or cleanup which may be required pursuant to this chapter.

§ 10.1-1406.1. Access to abandoned waste sites.

A. For the purposes of this section, "abandoned waste site" means a waste site for which (i) there has not been adequate remediation or closure as required by Chapter 14 (§ 10.1-1400 et seq.) of this title, (ii) adequate financial assurances as required by § 10.1-1410 or § 10.1-1428 are not provided, and (iii) the owner, operator, or other person responsible for the

cost of cleanup or remediation under state or federal law or regulation cannot be located.

B. Any local government or agency of the Commonwealth may apply to the appropriate circuit court for access to an abandoned waste site in order to investigate contamination, to abate any hazard caused by the improper management of substances within the jurisdiction of the Board, or to remediate the site. The petition shall include (i) a demonstration that all reasonable efforts have been made to locate the owner, operator or other responsible party and (ii) a plan approved by the Director and which is consistent with applicable state and federal laws and regulations. The approval or disapproval of a plan shall not be considered a case decision as defined by § 9-6.14:4.

C. Any person, local government, or agency of the Commonwealth not otherwise liable under federal or state law or regulation who performs any investigative, abatement or remediation activities pursuant to this section shall not become subject to civil enforcement or remediation action under this chapter or other applicable state laws or to private civil suits related to contamination not caused by its investigative, abatement or remediation activities.

D. This section shall not in any way limit the authority of the Board, Director, or Department otherwise created by Chapter 14 of this title.

§ 10.1-1406.2. Conditional exemption for coal and mineral mining overburden or solid waste.

The provisions of this chapter shall not apply to coal or mineral mining overburden returned to the mine site or solid wastes from the extraction, beneficiation, and processing of coal or minerals that are managed in accordance with requirements promulgated by the Department of Mines, Minerals and Energy.

§ 10.1-1407. Repealed by Acts 1988, cc. 696, 891.

§ 10.1-1407.1. Notification of local government of violation.

Upon determining that there has been a violation of a regulation promulgated under this chapter and such violation poses an imminent threat to the health, safety or welfare of the public, the Director shall immediately notify the chief administrative officer of any potentially affected local government. Neither the Director, the Commonwealth, nor any employee of the Commonwealth shall be liable for a failure to provide, or a delay in providing, the notification required by this section.

§ 10.1-1408. Repealed by Acts 1988, cc. 696, 891.

§ 10.1-1408.1. Permit required; open dumps prohibited.

A. No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the Director.

B. No application for (i) a new solid waste management facility permit or (ii) application for a permit amendment or variance allowing a category 2 landfill, as defined in this section, to expand or increase in capacity shall be complete unless it contains the following:

1. Certification from the governing body of the county, city or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances. The governing body shall inform the applicant and the Department of the facility's compliance or noncompliance not more than 120 days from receipt of a request from the applicant. No such certification shall be required for the application for the renewal of a permit or transfer of a permit as authorized by regulations of the Board;

2. A disclosure statement, except that the Director, upon request and in his sole discretion, and when in his judgment other information is sufficient and available, may waive the requirement for a disclosure statement for a captive industrial landfill when such a statement would not serve the purposes of this chapter;

3. If the applicant proposes to locate the facility on property not governed by any county, city or town zoning ordinance, certification from the governing body that it has held a public hearing, in accordance with the applicable provisions of § 15.2-2204, to receive public comment on the proposed facility. Such certification shall be provided to the applicant and the Department within 120 days from receipt of a request from the applicant;

4. If the applicant proposes to operate a new sanitary landfill or transfer station, a statement, including a description of the steps taken by the applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located, regarding the siting and operation of the proposed sanitary landfill or transfer station. The public comment steps shall be taken prior to filing

with the Department the notice of intent to apply for a permit for the sanitary landfill or transfer station as required by the Department's solid waste management regulations. The public comment steps shall include publication of a public notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is proposed to be located and holding at least one public meeting within the locality to identify issues of concern, to facilitate communication and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station. The public notice shall include a statement of the applicant's intent to apply for a permit to operate the proposed sanitary landfill or transfer station, the proposed sanitary landfill or transfer station site location, the date, time and location of the public meeting the applicant will hold and the name, address and telephone number of a person employed by the applicant, who can be contacted by interested persons to answer questions or receive comments on the siting and operation of the proposed sanitary landfill or transfer station. The first publication of the public notice shall be at least fourteen days prior to the public meeting date.

The provisions of this subdivision shall not apply to applicants for a permit to operate a new captive industrial landfill or a new construction-demolition-debris landfill;

5. If the applicant is a local government or public authority that proposes to operate a new municipal sanitary landfill or transfer station, a statement, including a description of the steps taken by the applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located, regarding the siting and operation of the proposed sanitary landfill or transfer station. The public comment steps shall be taken prior to filing with the Department the notice of intent to apply for a permit for the sanitary landfill or transfer station as required by the Department's solid waste management regulations. The public comment steps shall include the formation of a citizens' advisory group to assist the locality or public authority with the selection of a proposed site for the sanitary landfill or transfer station, publication of a public notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is proposed to be

located, and holding at least one public meeting within the locality to identify issues of concern, to facilitate communication and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station. The public notice shall include a statement of the applicant's intent to apply for a permit to operate the proposed sanitary landfill or transfer station, the proposed sanitary landfill or transfer station site location, the date, time and location of the public meeting the applicant will hold and the name, address and telephone number of a person employed by the applicant, who can be contacted by interested persons to answer questions or receive comments on the siting and operation of the proposed sanitary landfill or transfer station. The first publication of the public notice shall be at least fourteen days prior to the public meeting date. For local governments that have zoning ordinances, such public comment steps as required under §§ 15.2-2204 and 15.2-2285 shall satisfy the public comment requirements for public hearings and public notice as required under this section. Any applicant which is a local government or public authority that proposes to operate a new transfer station on land where a municipal sanitary landfill is already located shall be exempt from the public comment requirements for public hearing and public notice otherwise required under this section;

6. If the application is for a new municipal solid waste landfill or for an expansion of an existing municipal solid waste landfill, a statement, signed by the applicant, guaranteeing that sufficient disposal capacity will be available in the facility to enable localities within the Commonwealth to comply with solid waste management plans developed pursuant to § 10.1-1411, and certifying that such localities will be allowed to contract for and to reserve disposal capacity in the facility. This provision shall not apply to permit applications from one or more political subdivisions for new landfills or expanded landfills that will only accept municipal solid waste generated within those political subdivisions' jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional agreement;

7. If the application is for a new municipal solid waste landfill or for an expansion of an existing municipal solid waste landfill, certification from the governing body of the locality in which the facility would be located that a host agreement has been reached

between the applicant and the governing body unless the governing body or a public service authority of which the governing body is a member would be the owner and operator of the landfill. The agreement shall, at a minimum, have provisions covering (i) the amount of financial compensation the applicant will provide the host locality, (ii) daily travel routes and traffic volumes, (iii) the daily disposal limit, and (iv) the anticipated service area of the facility. The host agreement shall contain a provision that the applicant will pay the full cost of at least one full-time employee of the locality whose responsibility it will be to monitor and inspect waste transportation and disposal practices in the locality. The host agreement shall also provide that the applicant shall, when requested by the host locality, split air and water samples so that the host locality may independently test the sample, with all associated costs paid for by the applicant. All such sampling results shall be provided to the Department. For purposes of this subdivision, "host agreement" means any lease, contract, agreement or land use permit entered into or issued by the locality in which the landfill is situated which includes terms or conditions governing the operation of the landfill; and

8. If the application is for a locality-owned and locality-operated new municipal solid waste landfill or for an expansion of an existing such municipal solid waste landfill, information on the anticipated (i) daily travel routes and traffic volumes, (ii) daily disposal limit, and (iii) service area of the facility.

C. Notwithstanding any other provision of law:

1. Every holder of a permit issued under this article who has not earlier filed a disclosure statement shall, prior to July 1, 1991, file a disclosure statement with the Director.

2. Every applicant for a permit under this article shall file a disclosure statement with the Director, together with the permit application or prior to September 1, 1990, whichever comes later. No permit application shall be deemed incomplete for lack of a disclosure statement prior to September 1, 1990.

3. Every applicant shall update its disclosure statement quarterly to indicate any change of condition that renders any portion of the disclosure statement materially incomplete or inaccurate.

4. The Director, upon request and in his sole discretion, and when in his judgment other information is sufficient and available, may waive the requirements of this subsection for a captive industrial

waste landfill when such requirements would not serve the purposes of this chapter.

D. 1. Except as provided in subdivision D 2, no permit for a new solid waste management facility nor any amendment to a permit allowing facility expansion or an increase in capacity shall be issued until the Director has determined, after an investigation and analysis of the potential human health, environmental, transportation infrastructure, and transportation safety impacts and needs and an evaluation of comments by the host local government, other local governments and interested persons, that (i) the proposed facility, expansion, or increase protects present and future human health and safety and the environment; (ii) there is a need for the additional capacity; (iii) sufficient infrastructure will exist to safely handle the waste flow; (iv) the increase is consistent with locality-imposed or state-imposed daily disposal limits; (v) the public interest will be served by the proposed facility's operation or the expansion or increase in capacity of a facility; and (vi) the additional capacity is consistent with regional and local solid waste management plans developed pursuant to § 10.1-1411. The Department shall hold a public hearing within the said county, city or town prior to the issuance of any such permit for the management of nonhazardous solid waste.

Subdivision D 2, in lieu of this subdivision, shall apply to nonhazardous industrial solid waste management facilities owned or operated by the generator of the waste managed at the facility, and that accept only waste generated by the facility owner or operator. The Board shall have the authority to promulgate regulations to implement this subdivision.

2. No new permit for a nonhazardous industrial solid waste management facility that is owned or operated by the generator of the waste managed at the facility, and that accepts only waste generated by the facility owner or operator, shall be issued until the Director has determined, after investigation and evaluation of comments by the local government, that the proposed facility poses no substantial present or potential danger to human health or the environment. The Department shall hold a public hearing within the county, city or town where the facility is to be located prior to the issuance of any such permit for the management of nonhazardous industrial solid waste.

E. The permit shall contain such conditions or requirements as are necessary to comply with the requirements of this Code and the regulations of the

Board and to protect present and future human health and the environment.

The Director may include in any permit such recordkeeping, testing and reporting requirements as are necessary to ensure that the local governing body of the county, city or town where the waste management facility is located is kept timely informed regarding the general nature and quantity of waste being disposed of at the facility. Such recordkeeping, testing and reporting requirements shall require disclosure of proprietary information only as is necessary to carry out the purposes of this chapter. At least once every ten years, the Director shall review and issue written findings on the environmental compliance history of each permittee, material changes, if any, in key personnel, and technical limitations, standards, or regulations on which the original permit was based. The time period for review of each category of permits shall be established by Board regulation. If, upon such review, the Director finds that repeated material or substantial violations of the permittee or material changes in the permittee's key personnel would make continued operation of the facility not in the best interests of human health or the environment, the Director shall amend or revoke the permit, in accordance herewith. Whenever such review is undertaken, the Director may amend the permit to include additional limitations, standards, or conditions when the technical limitations, standards, or regulations on which the original permit was based have been changed by statute or amended by regulation or when any of the conditions in subsection B of § 10.1-1409 exist. The Director may deny, revoke, or suspend any permit for any of the grounds listed under subsection A of § 10.1-1409.

F. There shall exist no right to operate a landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste or hazardous waste within the Commonwealth. Permits for solid waste management facilities shall not be transferable except as authorized in regulations promulgated by the Board. The issuance of a permit shall not convey or establish any property rights or any exclusive privilege, nor shall it authorize any injury to private property or any invasion of personal rights or any infringement of federal, state, or local law or regulation.

G. No person shall dispose of solid waste in open dumps.

H. No person shall own, operate or allow to be operated on his property an open dump.

I. No person shall allow waste to be disposed of on his property without a permit. Any person who removes trees, brush, or other vegetation from land used for agricultural or forestal purposes shall not be required to obtain a permit if such material is deposited or placed on the same or other property of the same landowner from which such materials were cleared. The Board shall by regulation provide for other reasonable exemptions from permitting requirements for the disposal of trees, brush and other vegetation when such materials are removed for agricultural or forestal purposes.

When promulgating any regulation pursuant to this section, the Board shall consider the character of the land affected, the density of population, and the volume of waste to be disposed, as well as other relevant factors.

J. No permit shall be required pursuant to this section for recycling or for temporary storage incidental to recycling. As used in this subsection, "recycling" means any process whereby material which would otherwise be solid waste is used or reused, or prepared for use or reuse, as an ingredient in an industrial process to make a product, or as an effective substitute for a commercial product.

K. The Board shall provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of yard waste composting facilities. To accomplish this, the Board is authorized to exempt such facilities from regulations governing the treatment of waste and to establish an expedited approval process. Agricultural operations receiving only yard waste for composting shall be exempt from permitting requirements provided that (i) the composting area is located not less than 300 feet from a property boundary, is located not less than 1,000 feet from an occupied dwelling not located on the same property as the composting area, and is not located within an area designated as a flood plain as defined in § 10.1-600; (ii) the agricultural operation has at least one acre of ground suitable to receive yard waste for each 150 cubic yards of finished compost generated; (iii) the total time for the composting process and storage of material that is being composted or has been composted shall not exceed eighteen months prior to its field application or sale as a horticultural or agricultural product; and (iv) the owner or operator of the agricultural operation

notifies the Director in writing of his intent to operate a yard waste composting facility and the amount of land available for the receipt of yard waste. In addition to the requirements set forth in clauses (i) through (iv) of the preceding sentence, the owner and operator of any agricultural operation that receives more than 6,000 cubic yards of yard waste generated from property not within the control of the owner or the operator in any twelve-month period shall be exempt from permitting requirements provided (i) the owner and operator submit to the Director an annual report describing the volume and types of yard waste received by such operation for composting and (ii) the operator shall certify that the yard waste composting facility complies with local ordinances. The Director shall establish a procedure for the filing of the notices, annual reports and certificates required by this subsection and shall prescribe the forms for the annual reports and certificates. Nothing contained in this article shall prohibit the sale of composted yard waste for horticultural or agricultural use, provided that any composted yard waste sold as a commercial fertilizer with claims of specific nutrient values, promoting plant growth, or of conditioning soil shall be sold in accordance with the Virginia Fertilizer Act (§ 3.1-106.1 et seq.). As used in this subsection, "agricultural operation" shall have the same meaning ascribed to it in subsection B of § 3.1-22.29.

The operation of a composting facility as provided in this subsection shall not relieve the owner or operator of such a facility from liability for any violation of this chapter.

L. The Board shall provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of facilities for the decomposition of vegetative waste. To accomplish this, the Board shall approve an expedited approval process. As used in this subsection, the decomposition of vegetative waste means a natural aerobic or anaerobic process, active or passive, which results in the decay and chemical breakdown of the vegetative waste. Nothing in this subsection shall be construed to prohibit a city or county from exercising its existing authority to regulate such facilities by requiring, among other things, permits and proof of financial security.

M. In receiving and processing applications for permits required by this section, the Director shall assign top priority to applications which (i) agree to accept nonhazardous recycling residues and (ii)

pledge to charge tipping fees for disposal of nonhazardous recycling residues which do not exceed those charged for nonhazardous municipal solid waste. Applications meeting these requirements shall be acted upon no later than six months after they are deemed complete.

N. Every solid waste management facility shall be operated in compliance with the regulations promulgated by the Board pursuant to this chapter. To the extent consistent with federal law, those facilities which were permitted prior to March 15, 1993, and upon which solid waste has been disposed of prior to October 9, 1993, may continue to receive solid waste until they have reached their vertical design capacity, provided that the facility is in compliance with the requirements for liners and leachate control in effect at the time of permit issuance, and further provided that on or before October 9, 1993, the owner or operator of the solid waste management facility submits to the Director:

1. An acknowledgement that the owner or operator is familiar with state and federal law and regulations pertaining to solid waste management facilities operating after October 9, 1993, including postclosure care, corrective action and financial responsibility requirements;

2. A statement signed by a registered professional engineer that he has reviewed the regulations established by the Department for solid waste management facilities, including the open dump criteria contained therein; that he has inspected the facility and examined the monitoring data compiled for the facility in accordance with applicable regulations; and that, on the basis of his inspection and review, he has concluded that: (i) the facility is not an open dump, (ii) the facility does not pose a substantial present or potential hazard to human health and the environment, and (iii) the leachate or residues from the facility do not pose a threat of contamination or pollution of the air, surface water or ground water in a manner constituting an open dump or resulting in a substantial present or potential hazard to human health or the environment; and

3. A statement signed by the owner or operator (i) that the facility complies with applicable financial assurance regulations and (ii) estimating when the facility will reach its vertical design capacity. The facility may not be enlarged prematurely to avoid compliance with state or federal regulations when such enlargement is not consistent with past operating

practices, the permit or modified operating practices to ensure good management.

Facilities which are authorized by this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall be as follows:

Category 1: Nonhazardous industrial waste facilities that are located on property owned or controlled by the generator of the waste disposed of in the facility;

Category 2: Nonhazardous industrial waste facilities other than those that are located on property owned or controlled by the generator of the waste disposed of in the facility, provided that the facility accepts only industrial waste streams which the facility has lawfully accepted prior to July 1, 1995, or other nonhazardous industrial waste as approved by the Department on a case-by-case basis; and

Category 3: Facilities that accept only construction-demolition-debris waste as defined in the Board's regulations.

The Director may prohibit or restrict the disposal of waste in facilities described in this subsection which contains hazardous constituents as defined in applicable regulations which, in the opinion of the Director, would pose a substantial risk to health or the environment. Facilities described in category 3 may expand laterally beyond the waste disposal boundaries existing on October 9, 1993, provided that there is first installed, in such expanded areas, liners and leachate control systems meeting the applicable performance requirements of the Board's regulations, or a demonstration is made to the satisfaction of the Director that such facilities satisfy the applicable variance criteria in the Board's regulations.

Owners or operators of facilities which are authorized under this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities under the Board's current regulations and local ordinances. Prior to the expansion of any facility described in category 2 or 3, the owner or operator shall provide the Director with written notice of the proposed expansion at least sixty days prior to commencement of construction. The notice shall include recent groundwater monitoring data sufficient to determine that the facility does not pose a threat of contamination of groundwater in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment. The Director shall evaluate the data

included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment. Facilities, or portions thereof, which have reached their vertical design capacity shall be closed in compliance with regulations promulgated by the Board.

Nothing in this subsection shall alter any requirement for groundwater monitoring, financial responsibility, operator certification, closure, postclosure care, operation, maintenance or corrective action imposed under state or federal law or regulation, or impair the powers of the Director pursuant to § 10.1-1409.

O. Portions of a permitted solid waste management facility used solely for the storage of household hazardous waste may store household hazardous waste for a period not to exceed one year, provided that such wastes are properly contained and are segregated to prevent mixing of incompatible wastes.

P. Any permit for a new municipal solid waste landfill, and any permit amendment authorizing expansion of an existing municipal solid waste landfill, shall incorporate conditions to require that capacity in the landfill will be available to localities within the Commonwealth that choose to contract for and reserve such capacity for disposal of such localities' solid waste in accordance with solid waste management plans developed by such localities pursuant to § 10.1-1411. This provision shall not apply to permit applications from one or more political subdivisions for new landfills or expanded landfills that will only accept municipal solid waste generated within the political subdivision or subdivisions' jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional agreement.

Q. No owner or operator of a municipal solid waste management facility shall accept wastes for incineration or disposal from a vehicle operating with four or more axles unless the transporter of the waste provides certification, in a form prescribed by the Board, that the waste is free of substances not authorized for acceptance at the facility.

§ 10.1-1408.2. Certification and on-site presence of facility operator.

A. On and after January 1, 1993, no person shall be employed as a waste management facility operator,

nor shall any person represent himself as a waste management facility operator, unless such person has been licensed by the Board for Waste Management Facility Operators.

B. On and after January 1, 1993, all solid waste management facilities shall operate under the direct supervision of a waste management facility operator licensed by the Board for Waste Management Facility Operators.

§ 10.1-1408.3. Caps on levels of disposal.

A. The amount of municipal solid waste received at any landfill authorized to accept such waste shall not exceed an average of 2,000 tons per day, or the documented average actual amount of municipal solid waste received by such landfill on a daily basis during 1998, as reported to the Department of Environmental Quality pursuant to § 10.1-1413.1, whichever is greater, unless the landfill has received approval from the Board pursuant to subsection B for a larger tonnage allotment. The "average actual amount" shall be calculated by dividing the documented 1998 volume reported pursuant to § 10.1-1413.1 by the number of days the landfill received solid waste in 1998. Municipal solid waste removed from a landfill without adequate liner and leachate collection systems and transferred to a landfill with adequate liner and leachate collection systems shall not be included in the calculation of the allowable average daily tonnage pursuant to this section. However, the removal and transfer shall be conducted pursuant to an arrangement entered into prior to January 1, 1999, to which the locality where the waste will be redeposited is a party. For purposes of determining compliance with this section, daily averages shall be calculated based on disposal over a seven-day period.

B. In considering requests for increased tonnage allotments, the Board shall consider those factors set forth in subsection D of § 10.1-1408.1 and other factors it deems appropriate to protect the health, safety and welfare of the people of Virginia and Virginia's environmental and natural resources. No request for an increased tonnage allotment shall be approved by the Board until a public hearing on the proposed increase has been held in the locality where the landfill requesting the increase is located.

C. For any landfill in operation for less than two consecutive years as of December 31, 1998, the documented average actual amount of municipal solid waste received at the landfill on a daily basis shall be

based on any consecutive ninety-day period during 1998 but shall not exceed 2,400 tons per day.

D. The provisions of this section shall not be construed as allowing activities related to waste disposal that exceed those that may be found in state or local permits, regulations, ordinances, agreements, contracts or other instruments related to particular facilities or localities.

§ 10.1-1408.4. Landfill siting review.

A. Before granting a permit which approves site suitability for a new municipal solid waste landfill, the Director shall determine, in writing, that the site on which the landfill is to be constructed is suitable for the construction and operation of such a landfill. In making his determination, the Director shall consider and address, in addition to such others as he deems appropriate, the following factors:

1. Based on a written, site-specific report prepared by the Virginia Department of Transportation, the adequacy of transportation facilities that will be available to serve the landfill, including the impact of the landfill on local traffic volume, road congestion, and highway safety;
2. The potential impact of the proposed landfill on parks and recreational areas, public water supplies, marine resources, wetlands, historic sites, fish and wildlife, water quality, and tourism; and
3. The geologic suitability of the proposed site, including proximity to areas of seismic activity and karst topography.

The applicant shall provide such information on these factors as the Director may request.

B. In addition to such other types of locations as may be determined by the Board, no new municipal solid waste landfill shall be constructed:

1. In a 100-year flood plain;
2. In any tidal wetland or nontidal wetland contiguous to any surface water body;
3. Within five miles upgradient of any existing surface or groundwater public water supply intake or reservoir; however, in the counties of Mecklenburg and Halifax, a new municipal solid waste landfill may be constructed within a shorter distance from an existing surface or groundwater public water supply intake or reservoir if the Director determines that such distance would not be detrimental to human health and the environment;
4. In any area vulnerable to flooding resulting from dam failures;

5. Over a sinkhole or less than 100 feet above a solution cavern associated with karst topography;

6. In any park or recreational area, wildlife management area or area designated by any federal or state agency as the critical habitat of any endangered species; or

7. Over an active fault.

§ 10.1-1408.5. Special provisions regarding wetlands.

A. The Director shall not issue any solid waste permit for a new municipal solid waste landfill or the expansion of a municipal solid waste landfill that would be sited in a wetland, provided that this subsection shall not apply to the (i) expansion of an existing municipal solid waste landfill located in a city with a population between 41,000 and 52,500 when the owner or operator of the landfill is an authority created pursuant to § 15.2-5102 which has applied for a permit under § 404 of the federal Clean Water Act prior to January 1, 1989, and the owner or operator has received a permit under § 404 of the federal Clean Water Act and § 62.1-44.15:5 of this Code, or (ii) construction of a new municipal solid waste landfill in any county with a population between 29,200 and 30,000, according to the 1990 United States Census, and provided that the municipal solid waste landfills covered under clauses (i) and (ii) have complied with all other applicable federal and state environmental laws and regulations. It is expressly understood that while the provisions of this section provide an exemption to the general siting prohibition contained herein; it is not the intent in so doing to express an opinion on whether or not the project should receive the necessary environmental and regulatory permits to proceed.

B. Ground water monitoring shall be conducted at least quarterly by the owner or operator of any existing solid waste management landfill, accepting municipal solid waste, that was constructed on a wetland, has a potential hydrologic connection to such a wetland in the event of an escape of liquids from the facility, or is within a mile of such a wetland, unless the Director determines that less frequent monitoring is necessary. This provision shall not limit the authority of the Board or the Director to require that monitoring be conducted more frequently than quarterly. If the landfill is one that accepts only ash, ground water monitoring shall be conducted semiannually, unless more frequent monitoring is required by the Board or the Director. All results shall

be reported to the Department of Environmental Quality.

C. This section shall not apply to landfills which impact less than 1.25 acres of nontidal wetlands.

D. For purposes of this section, "wetland" means any tidal wetland or nontidal wetland contiguous to any tidal wetland or surface water body.

§ 10.1-1409. Revocation or amendment of permits.

A. Any permit issued by the Director pursuant to this article may be revoked, amended or suspended on any of the following grounds or on such other grounds as may be provided by the regulations of the Board:

1. The permit holder has violated any regulation or order of the Board, any condition of a permit, any provision of this chapter, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a threat of release of harmful substances into the environment or presents a hazard to human health, or the violation is representative of a pattern of serious or repeated violations which, in the opinion of the Director, demonstrate the permittee's disregard for or inability to comply with applicable laws, regulations or requirements;
2. The sanitary landfill or other facility used for disposal, storage or treatment of solid waste is maintained or operated in such a manner as to pose a substantial present or potential hazard to human health or the environment;
3. The sanitary landfill, or other facility used for the disposal, storage or treatment of solid waste, because of its location, construction or lack of protective construction or measures to prevent pollution, poses a substantial present or potential hazard to human health or the environment;
4. Leachate or residues from the sanitary landfill or other facility used for the disposal, storage or treatment of solid waste pose a substantial threat of contamination or pollution of the air, surface waters or ground water;
5. The person to whom the permit was issued abandons or ceases to operate the facility, or sells, leases or transfers the facility without properly transferring the permit in accordance with the regulations of the Board;
6. As a result of changes in key personnel, the Director finds that the requirements necessary for issuance of a permit are no longer satisfied;

7. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in applying for a permit or in his disclosure statement, or in any other report or certification required under this law or under the regulations of the Board, or has knowingly or willfully failed to notify the Director of any material change to the information in its disclosure statement; or

8. Any key personnel has been convicted of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1; racketeering; violation of antitrust laws; or has been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth or any other state and the Director determines that such conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner, as to warrant denial, revocation, amendment or suspension of the permit.

In making such determination, the Director shall consider:

- (a) The nature and details of the acts attributed to key personnel;
- (b) The degree of culpability of the applicant, if any;
- (c) The applicant's policy or history of discipline of key personnel for such activities;
- (d) Whether the applicant has substantially complied with all rules, regulations, permits, orders and statutes applicable to the applicant's activities in Virginia;
- (e) Whether the applicant has implemented formal management controls to minimize and prevent the occurrence of such violations; and
- (f) Mitigation based upon demonstration of good behavior by the applicant including, without limitation, prompt payment of damages, cooperation with investigations, termination of employment or other relationship with key personnel or other persons responsible for the violations or other demonstrations

of good behavior by the applicant that the Director finds relevant to its decision.

B. The Director may amend or attach conditions to a permit when:

1. There is a significant change in the manner and scope of operation which may require new or additional permit conditions or safeguards to protect the public health and environment;
2. There is found to be a possibility of pollution causing significant adverse effects on the air, land, surface water or ground water;
3. Investigation has shown the need for additional equipment, construction, procedures and testing to ensure the protection of the public health and the environment from significant adverse effects; or
4. The amendment is necessary to meet changes in applicable regulatory requirements.

C. If the Director finds that solid wastes are no longer being stored, treated or disposed at a facility in accordance with Board regulations, he may revoke the permit issued for such facility. As a condition to granting or continuing in effect a permit, he may also require the permittee to provide perpetual care and surveillance of the facility.

D. If the Director summarily suspends a permit pursuant to subdivision 18 of § 10.1-1402, the Director shall hold a conference pursuant to § 9-6.14:11 within forty-eight hours to consider whether to continue the suspension pending a hearing to amend or revoke the permit, or to issue any other appropriate order. Notice of the hearing shall be delivered at the conference or sent at the time the permit is suspended. Any person whose permit is suspended by the Director shall cease activity for which the permit was issued until the permit is reinstated by the Director or by a court.

§ 10.1-1410. Financial responsibility for abandoned facilities; penalties.

A. The Board shall promulgate regulations which ensure that if a facility for the disposal, transfer, or treatment of solid waste is abandoned, the costs associated with protecting the public health and safety from the consequences of such abandonment may be recovered from the person abandoning the facility. A facility that receives solid waste from a ship, barge or other vessel and is regulated under § 10.1-1454.1 shall be considered a transfer facility for the purposes of this subsection.

B. The regulations may include provisions for bonding, the creation of a trust fund to be maintained within the Department, self-insurance, other forms of commercial insurance, or such other mechanism as the Department may deem appropriate. Regulations governing the amount thereof shall take into consideration the potential for contamination and injury by the solid waste, the cost of disposal of the solid waste and the cost of restoring the facility to a safe condition. Any bonding requirements shall include a provision authorizing the use of personal bonds or other similar surety deemed sufficient to provide the protections specified in subsection A upon a finding by the Director that commercial insurance or surety bond cannot be obtained in the voluntary market due to circumstances beyond the control of the permit holder. Any commercial insurance or surety obtained in the voluntary market shall be written by an insurer licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2.

C. No state governmental agency shall be required to comply with such regulations.

D. Forfeiture of any financial obligation imposed pursuant to this section shall not relieve any holder of a permit issued pursuant to the provisions of this article of any other legal obligations for the consequences of abandonment of any facility.

E. Any funds forfeited prior to July 1, 1995, pursuant to this section and the regulations of the Board shall be paid over to the county, city or town in which the abandoned facility is located. The county, city or town in which the facility is located shall expend forfeited funds as necessary to restore and maintain the facility in a safe condition.

F. Any funds forfeited on or after July 1, 1995, pursuant to this section and the regulations of the Board shall be paid over to the Director. The Director shall then expend forfeited funds as necessary solely to restore and maintain the facility in a safe condition. Nothing in this section shall require the Director to expend funds from any other source to carry out the activities contemplated under this subsection.

G. Any person who knowingly and willfully abandons a solid waste management facility without proper closure or without providing adequate financial assurance instruments for such closure shall, if such failure to close results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision for the

costs incurred in abating, controlling, preventing, removing, or containing such harm or threat. Any person who knowingly and willfully abandons a solid waste management facility without proper closure or without providing adequate financial assurance instruments for such closure shall, if such failure to close results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

§ 10.1-1410.1. Sanitary landfill final closure plans; notification requirements.

When any owner or operator of a sanitary landfill submits by certified mail a final closure plan in accordance with the requirements of this chapter and the regulations adopted thereunder, the Department shall within ninety days of its receipt of such plan, notify by certified mail the owner or operator of the Department's decision to approve or disapprove the final closure plan. The ninety-day period shall begin on the day the Department receives the plan by certified mail.

§ 10.1-1410.2. Landfill postclosure monitoring, maintenance and plans.

A. The owner and operator of any solid waste landfill permitted under this chapter shall be responsible for ensuring that such landfill is properly closed in accordance with the Board's regulations and that the landfill is maintained and monitored after closure so as to protect human health and the environment. Maintenance and monitoring of solid waste landfills after closure shall be in accordance with the Board's regulations. At all times during the operational life of a solid waste landfill, the owner and operator shall provide to the Director satisfactory evidence of financial assurance consistent with all federal and state laws and regulations to ensure that the landfill will be:

1. Closed in accordance with the Board's regulations and the closure plan approved for the landfill; and
2. Monitored and maintained after closure, for such period of time as provided in the Board's regulations or for such additional period as the Director shall determine is necessary, in accordance with a postclosure plan approved by the Director.

B. Not less than 180 days prior to the completion of the postclosure monitoring and maintenance period as prescribed by the Board's regulations or by the

Director, the owner or operator shall submit to the Director a certificate, signed by a professional engineer licensed in the Commonwealth, that postclosure monitoring and maintenance have been completed in accordance with the postclosure plan. The certificate shall be accompanied by an evaluation, prepared by a professional engineer licensed in the Commonwealth and signed by the owner or operator, assessing and evaluating the landfill's potential for harm to human health and the environment in the event that postclosure monitoring and maintenance are discontinued. If the Director determines that continued postclosure monitoring or maintenance is necessary to prevent harm to human health or the environment, he shall extend the postclosure period for such additional time as the Director deems necessary to protect human health and the environment and shall direct the owner or operator to submit a revised postclosure plan and to continue postclosure monitoring and maintenance in accordance therewith. Requirements for financial assurance as set forth in subsection A shall apply throughout such extended postclosure period.

§ 10.1-1411. Regional and local solid waste management plans.

The Board is authorized to promulgate regulations specifying requirements for local and regional solid waste management plans.

To implement regional plans, the Governor may designate regional boundaries. The governing bodies of the counties, cities and towns within any region so designated shall be responsible for the development and implementation of a comprehensive regional solid waste management plan in cooperation with any planning district commission or commissions in the region. Where a county, city or town is not part of a regional plan, it shall develop and implement a local solid waste management plan in accordance with the Board's regulations.

The Board's regulations shall include all aspects of solid waste management including waste reduction, recycling and reuse, storage, treatment, and disposal and shall require that consideration be given to the handling of all types of nonhazardous solid waste generated in the region or locality. In promulgating such regulations, the Board shall consider urban concentrations, geographic conditions, markets, transportation conditions, and other appropriate factors and shall provide for reasonable variances and exemptions thereto, as well as variances or

exemptions from the minimum recycling rates specified herein when market conditions beyond the control of a county, city, town, or region make such mandatory rates unreasonable. The regulations shall permit a credit of one ton for each one ton of recycling residue generated in Virginia and deposited in a landfill permitted under subsection L of § 10.1-1408.1. The total annual credits shall not exceed one-fifth of the twenty-five percent requirement. Local and regional solid waste planning units shall maintain a minimum twenty-five percent recycling rate.

After July 1, 2000, no permit for a solid waste management facility shall be issued until the local or regional applicant has a plan approved by the Board in accordance with the regulations.

If a county levies a consumer utility tax and the ordinance provides that revenues derived from such source, to the extent necessary, be used for solid waste disposal, the county may charge a town or its residents, establishments and institutions an amount not to exceed their pro rata cost, based upon population for such solid waste management if the town levies a consumer utility tax. This shall not prohibit a county from charging for disposal of industrial or commercial waste on a county-wide basis, including that originating within the corporate limits of towns.

§ 10.1-1412. Contracts by counties, cities and towns. Any county, city or town may enter into contracts for the supply of solid waste to resource recovery facilities.

§ 10.1-1413. State aid to localities for solid waste disposal.

A. To assist localities in the collection, transportation, disposal and management of solid waste in accordance with federal and state laws, regulations and procedures, each county, city and town may receive for each fiscal year from the general fund of the state treasury sums appropriated for such purposes. The Director shall distribute such grants on a quarterly basis, in advance, in accordance with Board regulations, to those counties, cities and towns which submit applications therefor.

B. Any county, city or town applying for and receiving such funds shall utilize the funds only for the collection, transportation, disposal or management of solid waste. The Director shall cause the use and

expenditure of such funds to be audited and all funds not used for the specific purposes stated herein shall be refunded to the general fund.

C. All funds granted under the provisions of this section shall be conditioned upon and subject to the satisfactory compliance by the county, city or town with applicable federal and state legislation and regulations. The Director may conduct periodic inspections to ensure satisfactory compliance.

§ 10.1-1413.1. Waste information and assessment program.

A. The Department shall report by June 30 of each year the amount of solid waste, by weight or volume, disposed of in the Commonwealth during the preceding calendar year. The report shall identify solid waste by the following categories: (i) municipal solid waste; (ii) construction and demolition debris; (iii) incinerator ash; (iv) sludge other than sludge that is land applied in accordance with § 32.1-164.5; and (v) tires. For each such category the report shall include an estimate of the amount that was generated outside of the Commonwealth and the jurisdictions where such waste originated, if known. The report shall also estimate the amount of solid waste managed or disposed of by each of the following methods: (i) recycling; (ii) composting; (iii) landfilling; and (iv) incineration.

B. All permitted facilities that treat, store or dispose of solid waste shall provide the Department not more than annually, upon request, with such information in their possession as is reasonably necessary to prepare the report required by this section. At the option of the facility owner, the data collected may include an accounting of the facility's economic benefits to the locality where the facility is located including the value of disposal and recycling facilities provided to the locality at no cost or reduced cost, direct employment associated with the facility, and other economic benefits resulting from the facility during the preceding calendar year. No facility shall be required pursuant to this section to provide information that is a trade secret as defined in § 59.1-336.

C. This section shall not apply to captive waste management facilities.

§ 10.1-1413.2. Requirements for landfill closure. The Department shall prioritize the closure of landfills that are owned by local governments or political

subdivisions, or that are located in the locality and have been abandoned in violation of this chapter, and are not equipped with liner and leachate control systems meeting the requirements of the Board's regulations. The prioritization shall be based on the greatest threat to human health and the environment. The Department shall establish a schedule, after public notice and a period for public comment, based upon that prioritization requiring municipal solid waste landfills to cease accepting solid waste in, and to prepare financial closure plans for, disposal areas permitted before October 9, 1993. No municipal solid waste landfill may continue accepting waste after 2020 in any disposal area not equipped with a liner system approved by the Department pursuant to a permit issued after October 9, 1993. Notwithstanding the provisions of subsection N of § 10.1-1408.1, failure by a landfill owner or operator to comply with the schedule established by the Department shall be a violation of this chapter. The provisions of this subsection shall not apply to municipal solid waste landfills utilizing double synthetic liner systems permitted between December 21, 1988, and October 9, 1993, that are part of a post-mining land use plan approved under Chapter 19 (§ 45.1-226 et seq.) of Title 45.1.

#### § 10.1-1414. Definitions.

As used in this article, unless the context requires a different meaning:

"Advisory Board" means the Litter Control and Recycling Fund Advisory Board;

"Disposable package" or "container" means all packages or containers intended or used to contain solids, liquids or materials and so designated;

"Fund" means the Litter Control and Recycling Fund;

"Litter" means all waste material disposable packages or containers but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing;

"Litter bag" means a bag, sack, or durable material which is large enough to serve as a receptacle for litter inside a vehicle or watercraft which is similar in size and capacity to a state approved litter bag;

"Litter receptacle" means containers acceptable to the Department for the depositing of litter;

"Person" means any natural person, corporation, association, firm, receiver, guardian, trustee, executor, administrator, fiduciary, representative or group of individuals or entities of any kind;

"Public place" means any area that is used or held out for use by the public, whether owned or operated by public or private interests;

"Recycling" means the process of separating a given waste material from the waste stream and processing it so that it may be used again as a raw material for a product which may or may not be similar to the original product;

"Sold within the Commonwealth" or "sales of the business within the Commonwealth" means all sales of retailers engaged in business within the Commonwealth and in the case of manufacturers and wholesalers, sales of products for use and consumption within the Commonwealth;

"Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any person or property may be transported upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks; and

"Watercraft" means any boat, ship, vessel, barge, or other floating craft.

#### § 10.1-1415. Litter Control Program.

The Department shall support local, regional and statewide programs to control, prevent and eliminate litter from the Commonwealth and to encourage the recycling of discarded materials to the maximum practical extent. Every department of state government and all governmental units and agencies of the Commonwealth shall cooperate with the Department in the administration and enforcement of this article.

This article is intended to add to and coordinate existing litter control removal and recycling efforts, and not to terminate existing efforts nor, except as specifically stated, to repeal or affect any state law governing or prohibiting litter or the control and disposition of waste.

##### § 10.1-1415.1. Labeling of plastic container products required; penalty.

A. It shall be unlawful for any person to sell, expose for sale, or distribute any plastic bottle or rigid plastic container unless the container is labeled indicating the plastic resin used to produce the container. Such label shall appear on or near the bottom of the container, be clearly visible, and consist of a number placed within three triangulated arrows and letters placed below the triangle of arrows. The triangulated arrows shall be

equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by three arrows curved at their midpoints, shall depict a clockwise path around the code number. The numbers and letters shall be as follows:

1. For polyethylene terephthalate, the letters "PETE" and the number 1.
2. For high density polyethylene, the letters "HDPE" and the number 2.
3. For vinyl, the letter "V" and the number 3.
4. For low density polyethylene, the letters "LDPE" and the number 4.
5. For polypropylene, the letters "PP" and the number 5.
6. For polystyrene, the letters "PS" and the number 6.
7. For any other plastic resin, the letters "OTHER" and the number 7.

B. As used in subsection A of this section:

"Container," unless otherwise specified, refers to "rigid plastic container" or "plastic bottle" as those terms are defined below.

"Plastic bottle" means a plastic container intended for single use that has a neck that is smaller than the container, accepts a screw-type, snap cap or other closure and has a capacity of sixteen fluid ounces or more but less than five gallons.

"Rigid plastic container" means any formed or molded container, other than a bottle, intended for single use, composed predominantly of plastic resin, and having a relatively inflexible finite shape or form with a capacity of eight ounces or more but less than five gallons.

C. Any person convicted of a violation of the provisions of subsection A of this section shall be punished by a fine of not more than fifty dollars. Each day of violation shall constitute a separate offense.

#### § 10.1-1415.2. Plastic holding device prohibited.

A. On and after January 1, 1993, it shall be unlawful to sell or offer for sale beverage containers connected to each other, using rings or other devices constructed of plastic which is not degradable or recyclable.

B. For the purpose of this section:

"Beverage container" means the individual bottle, can, jar, or other sealed receptacle, in which a beverage is

sold, and which is constructed of metal, glass, or plastic, or other material, or any combination of these materials. "Beverage container" does not include cups or other similar open or loosely sealed containers.

"Degradable" means decomposition by photodegradation or biodegradation within a reasonable period of time upon exposure to natural elements.

#### § 10.1-1416. Collection and survey of litter.

Collections and surveys of the kinds of litter that are discarded in violation of the laws of the Commonwealth shall be conducted as the need is determined by the Department, after receipt of the recommendations of the Advisory Board, or as directed by the General Assembly. The survey shall include litter found throughout the Commonwealth, including standard metropolitan statistical areas and rural and recreational areas. To the fullest extent possible, in standard metropolitan statistical areas the Department of Transportation shall make use of local litter and trash collection services through arrangements with local governing bodies and appropriate agencies, in the discharge of the duties imposed by this section. The Department of Transportation shall report to the Governor, the General Assembly and the Department as to the amount of litter collected pursuant to this section and shall include in its report an analysis of litter types, their weights and volumes, and, where practicable, the recyclability of the types of products, packages, wrappings and containers which compose the principal amounts of the litter collected. The products whose packages, wrappings and containers constitute the litter shall include, but not be limited to the following categories:

1. Food for human or pet consumption;
2. Groceries;
3. Cigarettes and tobacco products;
4. Soft drinks and carbonated waters;
5. Beer and other malt beverages;
6. Wine;
7. Newspapers and magazines;
8. Paper products and household paper;
9. Glass containers;
10. Metal containers;
11. Plastic or fiber containers made of synthetic material;
12. Cleaning agents and toiletries;
13. Nondrug drugstore sundry products;

- 14. Distilled spirits; and
- 15. Motor vehicle parts.

§ 10.1-1417. Enforcement of article.

The Department shall have the authority to contract with other state and local governmental agencies having law-enforcement powers for services and personnel reasonably necessary to carry out the provisions of this article. In addition, all law-enforcement officers in the Commonwealth and those employees of the Department of Game and Inland Fisheries vested with police powers shall enforce the provisions of this article and regulations adopted hereunder, and are hereby empowered to arrest without warrant, persons violating any provision of this article or any regulations adopted hereunder. The foregoing enforcement officers may serve and execute all warrants and other process issued by the courts in enforcing the provisions of this article and regulations adopted hereunder.

§ 10.1-1418. Penalty for violation of article.

Every person convicted of a violation of this article for which no penalty is specifically provided shall be punished by a fine of not more than fifty dollars for each such violation.

§ 10.1-1418.1. Improper disposal of solid waste; civil penalties.

A. It shall be the duty of all persons to dispose of their solid waste in a legal manner.

B. Any owner of real estate in this Commonwealth, including the Commonwealth or any political subdivision thereof, upon whose property a person improperly disposes of solid waste without the landowner's permission, shall be entitled to bring a civil action for such improper disposal of solid waste. When litter is improperly disposed upon land owned by the Commonwealth, any resident of the Commonwealth shall have standing to bring a civil action for such improper disposal of solid waste. When litter is improperly disposed of upon land owned by any political subdivision of this Commonwealth, any resident of that political subdivision shall have standing to bring a civil action for such improper disposal of solid waste. When any person improperly disposes of solid waste upon land within the jurisdiction of any political subdivision, that political subdivision shall have standing to bring a civil action for such improper disposal of solid waste.

C. In any civil action brought pursuant to the provisions of this section, when the plaintiff establishes by a preponderance of the evidence that (i) the solid waste or any portion thereof had been in possession of the defendant prior to being improperly disposed of on any of the properties referred to in subsection A of this section and (ii) no permission had been given to the defendant to place the solid waste on such property, there shall be a rebuttable presumption that the defendant improperly disposed of the solid waste. When the solid waste has been ejected from a motor vehicle, the owner or operator of such motor vehicle shall in any civil action be presumed to be the person ejecting such matter. However, such presumption shall be rebuttable by competent evidence. This presumption shall not be applicable to a motor vehicle rental or leasing company that owns the vehicle.

D. Whenever a court finds that a person has improperly disposed of solid waste pursuant to the provisions of this section, the court shall assess a civil penalty of up to \$5,000 against such defendant. All civil penalties assessed pursuant to this section shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title, except as provided in subsection E.

E. Any civil penalty assessed pursuant to this section in a civil action brought by a political subdivision shall be paid into the treasury of the political subdivision, except where the violator of this section is the political subdivision or its agent.

F. A court may award any person or political subdivision bringing suit pursuant to this section the cost of suit and reasonable attorney's fees.

§ 10.1-1418.2. Improper disposal of tires; exemption; penalty.

A. For the purposes of this section:

"Convenience center" means a collection point for the temporary storage of waste tires provided for individuals who choose to transport waste tires generated on their own premises to an established centralized point, rather than directly to a disposal facility. To be classified as a convenience center, the collection point shall not receive waste tires from collection vehicles that have collected waste from more than one real property owner. A convenience

center shall have a system of regularly scheduled collections and may be covered or uncovered.

"Speculatively accumulated waste tires" means any waste tires that are accumulated before being used, reused, or reclaimed or in anticipation of potential use, reuse, or reclamation. Waste tires are not being accumulated speculatively when at least 75 percent of the waste tires accumulated are being removed from the site annually.

B. It shall be unlawful for any person to store, dispose of, speculatively accumulate or otherwise place more than 100 waste tires on public or private property, without first having obtained a permit as required by § [10.1-1408.1](#) or in a manner inconsistent with any local ordinance. No person shall allow others to store, dispose of, speculatively accumulate or otherwise place on his property more than 100 waste tires, without first having obtained a permit as required by § 10.1-1408.1.

C. Any person who knowingly violates any provision of this section shall be guilty of a Class 1 misdemeanor. However, any person who knowingly violates any provision of this section and such violation involves 500 or more waste tires shall be guilty of a Class 6 felony.

D. Salvage yards licensed by the Department of Motor Vehicles shall be exempt from this section, provided that they are holding fewer than 300 waste tires and that the waste tires do not pose a hazard or a nuisance or present a threat to human health and the environment.

E. As used in this section, the terms "store" and "otherwise place" shall not be construed as meaning the holding of fewer than 500 tires for bona fide uses related to the growing, harvesting or processing of agricultural or forest products.

F. The provisions of this section shall not apply to the (i) storage of less than 1,500 waste tires in a container at a convenience center or at a salvage yard licensed by the Department of Motor Vehicles, as long as the tires are not being speculatively accumulated, or (ii) storage of tires for recycling or for processing to use in manufacturing a new product, as long as the tires are not being speculatively accumulated.

G. The provisions of this section shall not apply to the storage of tires for recycling or for processing to use in manufacturing a new product, as long as the tires are not being speculatively accumulated.

H. Nothing in this section shall limit enforcement of the prohibitions against littering and the improper

disposal of solid waste contained elsewhere in this chapter.

§ 10.1-1418.3. Liability for large waste tire pile fires; exclusions.

A. For the purposes of this section:

"Tire pile" means an unpermitted accumulation of more than 100 waste tires.

B. For any tire pile that (i) is included in the survey of waste tire piles completed by the Department in 1993 or (ii) contains tires that were placed on property with the consent of the property owner, any person who owns or is legally responsible for such a tire pile that burns or is burned and any person who owns or is legally responsible for the property where the tire pile is located shall be responsible for the damage caused by the fire and by any waste or chemical constituents released into the environment to any person who sustains damage from the fire or from any released wastes or chemical constituents. It shall not be necessary for the claimant to show that the damage was caused by negligence on the part of such owners, legally responsible persons or other person who set or caused to be set the fire that burns the tires. Damages include, but are not limited to, the cost for any repair, replacement, remediation, or other appropriate action required as a result of the fire. This liability shall be in addition to, and not in lieu of, any other liability authorized by statute or regulation. Without limiting what constitutes consent, acceptance of compensation for the placement of tires on one's property shall be deemed to be consent.

C. Any person who sets or causes to be set the fire that burns the tire pile shall be responsible for the damage caused by the fire and by any waste or chemical constituents released into the environment to any person who sustains damage from the fire or from any released wastes or chemical constituents. It shall not be necessary for the claimant to show that the damage was caused by negligence on the part of such owners, legally responsible persons or other persons who set or caused to be set the fire that burns the tires. Damages shall include, but are not limited to, the cost for any repair, replacement, remediation, or other appropriate action required as a result of the fire. This liability shall be in addition to, and not in lieu of, any liability authorized by statute or regulation.

D. Any person who transfers waste tires for disposition and has taken all reasonable steps to ensure proper disposition of the waste tires shall not

be held liable under the standard set forth in subsection B. Documentation that a person has taken all reasonable steps to ensure proper disposition of the waste tires may include, but is not limited to, utilization of the Waste Tire Certification developed by the Department and any equivalent manifest or tracking system.

§ [10.1-1418.4](#). Removal of waste tire piles; cost recovery; right of entry.

Notwithstanding any other provision, upon the failure of any owner or operator to remove or remediate a waste tire pile in accordance with an order issued pursuant to this chapter or § 10.1-1186, the Director may enter the property and remove the waste tires. The Director is authorized to recover from the owner of the site or the operator of the tire pile the actual and reasonable costs incurred to complete such removal or remediation. If a request for reimbursement is not paid within 30 days of the receipt of a written demand for reimbursement, the Director may refer the demand for reimbursement to the Attorney General for collection or may secure a lien in accordance with § [10.1-1418.5](#).

§ [10.1-1418.5](#). Lien for waste tire pile removal.

A. The Commonwealth shall have a lien, if perfected as hereinafter provided, on land subject to removal action under § [10.1-1418.4](#) for the amount of the actual and reasonable costs incurred to complete such removal action.

B. The Director shall perfect the lien given under the provisions of this section by filing, within six months after completion of the removal, in the clerk's office of the court of the county or city in which the land or any part of the land is situated, a statement consisting of (i) the name of the owner of record of the property sought to be charged, (ii) an itemized account of moneys expended for the removal work, and (iii) a brief description of the property to which the lien attaches.

C. It shall be the duty of the clerk of the court in whose office the statement described in subsection B is filed to record the statement in the deed books of the office and to index the statement in the general index of deeds in the name of the Commonwealth as well as the owner of the property, and shall show the type of such lien. From the time of such recording and indexing, all persons shall be deemed to have notice thereof.

D. Liens acquired under this section shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

E. Any party having an interest in the real property against which a lien has been filed may, within 60 days of such filing, petition the court of equity having jurisdiction wherein the property or some portion of the property is located to hold a hearing to review the amount of the lien. After reasonable notice to the Director, the court shall hold a hearing to determine whether such costs were reasonable. If the court determines that such charges were excessive, it shall determine the proper amount and order that the lien and the record be amended to show the new amount.

F. Liens acquired under this article shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this section. The proceeds from any lien shall be deposited in the Waste Tire Trust Fund established pursuant to § [10.1-1422.3](#). If an owner fails to satisfy a lien as provided herein, the Director may proceed to enforce the lien by a bill filed in the court of equity having jurisdiction wherein the property or some portion of the property is located.

§ 10.1-1419. Litter receptacles; placement; penalty for violations.

A. The Board shall promulgate regulations establishing reasonable guidelines for the owners or persons in control of any property which is held out to the public as a place for assemblage, the transaction of business, recreation or as a public way who may be required to place and maintain receptacles acceptable to the Board.

In formulating such regulations the Board shall consider, among other public places, the public highways of the Commonwealth, all parks, campgrounds, trailer parks, drive-in restaurants, construction sites, gasoline service stations, shopping centers, retail store parking lots, parking lots of major industrial and business firms, marinas, boat launching areas, boat moorage and fueling stations, public and private piers and beaches and bathing areas. The number of such receptacles required to be placed as specified herein shall be determined by the Board and related to the need for such receptacles. Such litter receptacles shall be maintained in a manner to prevent overflow or spillage.

B. A person owning or operating any establishment or public place in which litter receptacles of a design acceptable to the Board are required by this section shall procure and place such receptacles at his own expense on the premises in accordance with Board regulations.

C. Any person who fails to place and maintain such litter receptacles on the premises in the number and manner required by Board regulation, or who violates the provisions of this section or regulations adopted hereunder shall be subject to a fine of twenty-five dollars for each day of violation.

§ 10.1-1420. Litter bag.

The Department may design and produce a litter bag bearing the state anti-litter symbol and a statement of the penalties prescribed for littering. Such litter bags may be distributed by the Department of Motor Vehicles at no charge to the owner of every licensed vehicle in the Commonwealth at the time and place of the issuance of a license or renewal thereof. The Department may make the litter bags available to the owners of watercraft in the Commonwealth and may also provide the litter bags at no charge to tourists and visitors at points of entry into the Commonwealth and at visitor centers to the operators of incoming vehicles and watercraft.

§ 10.1-1421. Responsibility for removal of litter from receptacles.

The responsibility for the removal of litter from litter receptacles placed at parks, beaches, campgrounds, trailer parks, and other public places shall remain upon those state and local agencies now performing litter removal services. The removal of litter from litter receptacles placed on private property used by the public shall remain the duty of the owner or operator of such private property.

§ 10.1-1422. Further duties of Department.

In addition to the foregoing duties the Department shall:

1. Serve as the coordinating agency between the various industry and business organizations seeking to aid in the recycling and anti-litter effort;
2. Recommend to local governing bodies that they adopt ordinances similar to the provisions of this article;
3. Cooperate with all local governments to accomplish coordination of local recycling and anti-litter efforts;

4. Encourage all voluntary local recycling and anti-litter campaigns seeking to focus the attention of the public on the programs of the Commonwealth to control and remove litter and encourage recycling;
5. Investigate the availability of, and apply for, funds available from any private or public source to be used in the program provided for in this article;
6. Allocate funds annually for the study of available research and development in recycling and litter control, removal, and disposal, as well as study methods for implementation in the Commonwealth of such research and development. In addition, such funds may be used for the development of public educational programs concerning the litter problem and recycling. Grants shall be made available for these purposes to those persons deemed appropriate and qualified by the Board or the Department;
7. Investigate the methods and success of other techniques in recycling and the control of litter, and develop, encourage and coordinate programs in the Commonwealth to utilize successful techniques in recycling and the control and elimination of litter; and
8. Expend, after receiving the recommendations of the Advisory Board, at least seventy-five percent of the funds deposited annually into the Fund pursuant to contracts with localities. The Department may enter into contracts with planning district commissions for the receipt and expenditure of funds attributable to localities which designate in writing to the Department a planning district commission as the agency to receive and expend funds hereunder.

§ 10.1-1422.01. Litter Control and Recycling Fund established; use of moneys; purpose of Fund.

A. All moneys collected from the taxes imposed under §§ 58.1-1700 through 58.1-1710 and by the taxes increased by Chapter 616 of the 1977 Acts of Assembly, shall be paid into the treasury and credited to a special nonreverting fund known as the Litter Control and Recycling Fund, which is hereby established. The Fund shall be established on the books of the Comptroller. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it. The Director is authorized to release money from the Fund on warrants issued by the Comptroller after receiving and considering the recommendations of the Advisory Board for the purposes enumerated in subsection B of this section.

B. Moneys from the Fund shall be expended, according to the allocation formula established in subsection C of this section, for the following purposes:

1. Local litter prevention and recycling grants to localities that meet the criteria established in § 10.1-1422.04;
2. Statewide and regional litter prevention and recycling educational program grants to persons meeting the criteria established in § 10.1-1422.05; and
3. Payment to (i) the Department to process the grants authorized by this article and (ii) the administrative costs of the Advisory Board. The Director shall assign one person in the Department to serve as a contact for persons interested in the Fund.

C. All moneys deposited into the Fund shall be expended pursuant to the following allocation formula:

1. Seventy-five percent for grants made to localities pursuant to subdivision B 1 of this section;
2. Twenty percent for statewide and regional educational program grants made pursuant to subdivision B 2 of this section; and
3. Five percent for the administrative expenditures authorized pursuant to subdivision B 3 of this section.

§ 10.1-1422.02. Litter Control and Recycling Fund Advisory Board established; duties and responsibilities.

There is hereby created the Litter Control and Recycling Fund Advisory Board. The Advisory Board shall:

1. Review applications received by the Department for grants from the Fund and make recommendations to the Director for the award of all grants authorized pursuant to § 10.1-1422.01;
2. Promote the control, prevention and elimination of litter from the Commonwealth and encourage the recycling of discarded materials to the maximum practical extent; and
3. Advise the Director on such other litter control and recycling matters as may be requested by the Director or any other state agency.

§ 10.1-1422.03. Membership, meetings, and staffing.

A. The Advisory Board shall consist of five persons appointed by the Governor. Three members shall represent persons paying the taxes which are deposited into the Fund and shall include one member appointed from nominations submitted by recognized

industry associations representing retailers; one member appointed from nominations submitted by recognized industry associations representing soft drink distributors; and one member appointed from nominations submitted by recognized industry associations representing beer distributors. One member shall be a local litter or recycling coordinator. One member shall be from the general public.

B. The initial terms of the members of the Advisory Board shall expire July 1, 1999, and five members shall be appointed or reappointed effective July 1, 1999, for terms as follows: one member shall be appointed for a term of one year; one member shall be appointed for a term of two years; one member shall be appointed for a term of three years; and two members shall be appointed for terms of four years unless found to violate subsection E of this section. Thereafter, all appointments shall be for terms of four years except for appointments to fill vacancies, which shall be for the unexpired term. They shall not receive a per diem, compensation for their service, or travel expenses.

C. The Advisory Board shall elect a chairman and vice-chairman annually from among its members. The Advisory Board shall meet at least twice annually on such dates and at such times as they determine. Three members of the Advisory Board shall constitute a quorum.

D. Staff support and associated administrative expenses of the Advisory Board shall be provided by the Department from funds allocated from the Fund.

E. Any member who is absent from three consecutive meetings of the Advisory Board, as certified by the Chairman of the Advisory Board to the Secretary of the Commonwealth, shall be dismissed as a member of the Advisory Board. The replacement of any dismissed member shall be appointed pursuant to subsection A of this section and meet the same membership criteria as the member who has been dismissed.

§ 10.1-1422.04. Local litter prevention and recycling grants; eligibility and funding process.

The Director shall award local litter prevention and recycling grants to localities that apply for such grants and meet the eligibility requirements established in the Department's Guidelines for Litter Prevention and Recycling Grants (DEQ-LPR-2) which were in effect on January 1, 1995, and as may be amended by the Advisory Board after notice and opportunity to be

heard by persons interested in grants awarded pursuant to this section. Grants awarded by the Director shall total the amount of Litter Control and Recycling Funds available annually as provided in subdivision B 1 of § 10.1-1422.01.

§ 10.1-1422.05. Statewide and regional litter control and recycling grants.

The Director, after receiving the recommendations of the Advisory Board, shall award statewide and regional litter prevention and recycling grants to persons for the public purpose of the development and implementation of statewide and regional litter prevention and recycling educational programs. For purposes of this section, the term "person" includes any nonprofit entity that the Director finds has experience and success in statewide litter control and recycling educational programs and has a membership that represents the Commonwealth at large as well as any person meeting the definition of "person" in § 10.1-1414. Grants awarded by the Director pursuant to this section shall total the amount of litter control and recycling funds available annually as provided in subdivision B 2 of § 10.1-1422.01.

§ 10.1-1422.1. Disposal of waste tires.

The Department shall develop and implement a plan for the management and transportation of all waste tires in the Commonwealth.

§ 10.1-1422.2. Recycling residues; testing.

The Department shall develop and implement a plan for the testing of recycling residues generated in the Commonwealth to determine whether they are nonhazardous. The costs of conducting such tests shall be borne by the person wishing to dispose of such residues.

§ 10.1-1422.3. Waste Tire Trust Fund established; use of moneys; purpose of Fund.

A. All moneys collected pursuant to § 58.1-642, minus the necessary expenses of the Department of Taxation for the administration of this tire recycling fee as certified by the Tax Commissioner, shall be paid into the treasury and credited to a special nonreverting fund known as the Waste Tire Trust Fund, which is hereby established. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited

to it. The Department of Waste Management is authorized and empowered to release moneys from the Fund, on warrants issued by the State Comptroller, for the purposes enumerated in this section, or any regulations adopted thereunder.

B. Moneys from the Fund shall be expended to:

1. Pay the costs of implementing the waste tire plan authorized by § 10.1-1422.1, as well as the costs of any programs created by the Department pursuant to such a plan;
2. Provide partial reimbursement to persons for the costs of using waste tires or chips or similar materials; and
3. Pay the costs to remove waste tire piles from property pursuant to § 10.1-1418.4, to the extent funds are available from the increased revenues generated by the increased tire recycling fee collected beginning July 1, 2003, and ending July 1, 2006, in accordance with § 58.1-641.

C. Reimbursements under § 10.1-1422.4 shall not be made until regulations establishing reimbursement procedures have become effective.

§ 10.1-1422.4. Partial reimbursement for waste tires; eligibility; promulgation of regulations.

A. The intent of the partial reimbursement of costs under this section is to promote the use of waste tires by enhancing markets for waste tires or chips or similar materials.

B. Any person who (i) purchases waste tires generated in Virginia and who uses the tires or chips or similar materials for resource recovery or other appropriate uses as established by regulation may apply for partial reimbursement of the cost of purchasing the tires or chips or similar materials or (ii) uses but does not purchase waste tires or chips or similar materials for resource recovery or other appropriate uses as established by regulation may apply for a reimbursement of part of the cost of such use.

C. To be eligible for the reimbursement (i) the waste tires or chips or similar materials shall be generated in Virginia, and (ii) the user of the waste tires shall be the end user of the waste tires or chips or similar materials. The end user does not have to be located in Virginia.

D. Reimbursements from the Waste Tire Trust Fund shall be made at least quarterly.

E. The Board shall promulgate regulations necessary to carry out the provisions of this section. The regulations shall include, but not be limited to:

1. Defining the types of uses eligible for partial reimbursement;

2. Establishing procedures for applying for and processing of reimbursements; and

3. Establishing the amount of reimbursement.

F. For the purposes of this section "end user" means

(i) for resource recovery, the person who utilizes the heat content or other forms of energy from the incineration or pyrolysis of waste tires, chips or similar materials and (ii) for other eligible uses of waste tires, the last person who uses the tires, chips, or similar materials to make a product with economic value. If the waste tire is processed by more than one person in becoming a product, the end user is the last person to use the tire as a tire, as tire chips, or as similar material. A person who produces tire chips or similar materials and gives or sells them to another person to use is not an end user.

§ 10.1-1422.5. Repealed by Chapter 569 of the 2001 Acts of Assembly.

§ 10.1-1422.6. Used motor oil, oil filters, and antifreeze; signs; establishment of statewide program.

A. The Department shall establish a statewide used motor oil, oil filters, and antifreeze management program. The program shall encourage the environmentally sound management of motor oil, oil filters, and antifreeze by (i) educating consumers on the environmental benefits of proper management, (ii) publicizing options for proper disposal, and (iii) promoting a management infrastructure that allows for the convenient recycling of these materials by the public. The Department may contract with a qualified public or private entity to implement this program.

B. The Department shall maintain a statewide list of sites that accept used (i) motor oil, (ii) oil filters, and (iii) antifreeze from the public. The list shall be updated at least annually. The Department shall create, maintain, and promote an Internet Web site where consumers may receive information describing the location of collection sites in their locality to properly dispose of used motor oil, oil filters, and antifreeze.

C. The Department shall establish an ongoing outreach program to existing and potential collection sites that provides a point of contact for questions and disseminates information on (i) the way to establish a collection site, (ii) technical issues associated with

being a collection site, and (iii) the benefits of continued participation in the program.

D. Any person who sells motor oil, oil filters, or antifreeze at the retail level and who does not accept the return of used motor oil, oil filters, or antifreeze shall post a sign that encourages the environmentally sound management of these products and provides a Web site address where additional information on the locations of used motor oil, oil filters and antifreeze collection

sites are available. This sign shall be provided by the Department or its designee to all establishments selling motor oil, oil filters, or antifreeze. In determining the size and manner in which such signs may be affixed or displayed at the retail establishment, the Department shall give consideration to the space available in such retail establishments.

E. Any person who violates any provision of subsection D shall be subject to a fine of twenty-five dollars.

§ 10.1-1423. Notice to public required.

Pertinent portions of this article shall be posted along the public highways of the Commonwealth, at public highway entrances to the Commonwealth, in all campgrounds and trailer parks, at all entrances to state parks, forest lands and recreational areas, at all public beaches, and at other public places in the Commonwealth where persons are likely to be informed of the existence and content of this article and the penalties for violating its provisions.

§ 10.1-1424. Allowing escape of load material; penalty.

No vehicle shall be driven or moved on any highway unless the vehicle is constructed or loaded to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom. However, sand or any substance for increasing traction during times of snow and ice may be dropped for the purpose of securing traction, or water or other substances may be sprinkled on a roadway in cleaning or maintaining the roadway by the Commonwealth or local government agency having that responsibility. Any person operating a vehicle from which any glass or objects have fallen or escaped which could constitute an obstruction or damage a vehicle or otherwise endanger travel upon a public highway shall immediately cause the highway to be cleaned of all glass or objects and shall pay any

costs therefor. Violation of this section shall constitute a Class 1 misdemeanor.

§ 10.1-1424.1. Material containing fully halogenated chloro/y-fluorocarbons prohibited; penalty.

A. On and after January 1, 1992, it shall be unlawful for any distributor or manufacturer knowingly to sell or offer for sale, for purposes of resale, any packaging materials that contain fully halogenated

chlorofluorocarbons as a blowing or expansion agent.

B. Any person convicted of a violation of the provisions of this section shall be guilty of a Class 3 misdemeanor.

§ [10.1-1424.2](#). Products containing trichloroethylene prohibited; penalty.

As of January 1, 2004, it shall be unlawful for any person to knowingly sell or distribute for retail sale in the Commonwealth any product containing trichloroethylene if such product is manufactured for or commonly used as an adhesive for residential hardwood floor installation.

As of January 1, 2006, it shall be unlawful for any person to knowingly sell or distribute for retail sale in the Commonwealth any product manufactured on or after January 1, 2004, for any household or residential purpose if such product contains trichloroethylene. Any person convicted of a violation of this section shall be guilty of a Class 3 misdemeanor.

§ 10.1-1425. Preemption of certain local ordinances.

The provisions of this article shall supersede and preempt any local ordinance which attempts to regulate the size or type of any container or package containing food or beverage or which requires a deposit on a disposable container or package.

§ 10.1-1425.1. Lead acid batteries; land disposal prohibited; penalty.

A. It shall be unlawful for any person to place a used lead acid battery in mixed municipal solid waste or to discard or otherwise dispose of a lead acid battery except by delivery to a battery retailer or wholesaler, or to a secondary lead smelter, or to a collection or recycling facility authorized under the laws of this Commonwealth or by the United States Environmental Protection Agency. As used in this article, the term "lead acid battery" shall mean any wet cell battery.

B. It shall be unlawful for any battery retailer to dispose of a used lead acid battery except by delivery to (i) the agent of a battery wholesaler or a secondary lead smelter, (ii) a battery manufacturer for delivery to a secondary lead smelter, or (iii) a collection or recycling facility authorized under the laws of this Commonwealth or by the United States Environmental Protection Agency.

C. Any person found guilty of a violation of this section shall be punished by a fine of not more than fifty dollars. Each battery improperly disposed of shall constitute a separate violation.

§ 10.1-1425.2. Collection of lead acid batteries for recycling.

Any person selling lead acid batteries at retail or offering lead acid batteries for retail sale in the Commonwealth shall:

1. Accept from customers, at the point of transfer, used lead acid batteries of the type and in a quantity at least equal to the number of new batteries purchased, if offered by customers; and
2. Post written notice which shall be at least 8 1/2 inches by 11 inches in size and which shall include the universal recycling symbol and the following language: (i) "It is illegal to discard a motor vehicle battery or other lead acid battery," (ii) "Recycle your used batteries," and (iii) "State law requires us to accept used motor vehicle batteries or other lead acid batteries for recycling, in exchange for new batteries purchased."

§ 10.1-1425.3. Inspection of battery retailers; penalty.

The Department shall produce, print, and distribute the notices required by § 10.1-1425.2 to all places in the Commonwealth where lead acid batteries are offered for sale at retail. In performing its duties under this section, the Department may inspect any place, building, or premise subject to the provisions of § 10.1-1425.2. Authorized employees of the Department may issue warnings to persons who fail to comply with the provisions of this article. Any person found guilty of failing to post the notice required under § 10.1-1425.2 after receiving a warning to do so pursuant to this section shall be punished by a fine of not more than fifty dollars.

§ 10.1-1425.4. Lead acid battery wholesalers; penalty.

A. It shall be unlawful for any person selling new lead acid batteries at wholesale to not accept from

customers at the point of transfer, used lead acid batteries of the type and in a quantity at least equal to the number of new batteries purchased, if offered by customers. A person accepting batteries in transfer from a battery retailer shall be allowed a period not to exceed ninety days to remove batteries from the retail point of collection.

B. Any person found guilty of a violation of this section shall be punished by a fine of not more than fifty dollars. Each battery unlawfully refused by a wholesaler or not removed from the retail point of collection within ninety days shall constitute a separate violation.

§ 10.1-1425.5. Construction of article.

The provisions of this article shall not be construed to prohibit any person who does not sell new lead acid batteries from collecting and recycling such batteries.

§ 10.1-1425.6. Recycling programs of state agencies.

A. It shall be the duty of each state university and state agency of the Commonwealth, including the General Assembly, to establish programs for the use of recycled materials and for the collection, to the extent feasible, of all recyclable materials used or generated by such entities, including, at a minimum, used motor oil, glass, aluminum, office paper and corrugated paper. Such programs shall be in accordance with the programs and plans developed by the Department of Waste Management, which shall serve as the lead agency for the Commonwealth's recycling efforts. The Department shall develop such programs and plans by July 1, 1991.

B. In fulfilling its duties under this section, each agency of the Commonwealth shall implement procedures for (i) the collection and storage of recyclable materials generated by such agency, (ii) the disposal of such materials to buyers, and (iii) the reduction of waste materials generated by such agency.

§ 10.1-1425.7. Duty of the Department of Business Assistance.

The Department of Business Assistance shall assist the Department by encouraging and promoting the establishment of appropriate recycling industries in the Commonwealth.

§ 10.1-1425.8. Department of Transportation; authority and duty.

The Department of Transportation is authorized to conduct recycling research projects, including the establishment of demonstration projects which use recycled products in highway construction and maintenance. Such projects may include by way of example and not by limitation the use of ground rubber from used tires or glass for road surfacing, resurfacing and sub-base materials, as well as the use of plastic or mixed plastic materials for ground or guard rail posts, right-of-way fence posts and sign supports.

The Department of Transportation shall periodically review and revise its bid procedures and specifications to encourage the use of products and materials with recycled content in its construction and maintenance programs.

The Commonwealth Transportation Commissioner may continue to provide for the collection of used motor oil and motor vehicle antifreeze from the general public at maintenance facilities in the County of Bath. The Commonwealth Transportation Commissioner may designate the source of funding for the collection and disposal of these materials.

§ 10.1-1425.9. Duties of the Department of Education.

With the assistance of the Department of Waste Management, the Department of Education shall develop by July 1, 1992, guidelines for public schools regarding (i) the use of recycled materials, (ii) the collection of recyclable materials, and (iii) the reduction of solid waste generated in such school's offices, classrooms and cafeterias.

§ 10.1-1425.10. Definition.

As used in this article, unless the context requires a different meaning:

"Pollution prevention" means eliminating or reducing the use, generation or release at the source of environmental waste. Methods of pollution prevention include, but are not limited to, equipment or technology modifications; process or procedure modifications; reformulation or redesign of products; substitution of raw materials; improvements in housekeeping, maintenance, training, or inventory control; and closed-loop recycling, onsite process-related recycling, reuse or extended use of any material utilizing equipment or methods which are an integral part of a production process. The term shall not include any practice which alters the physical, chemical, or biological characteristics or the volume

of an environmental waste through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service, and shall not include treatment, increased pollution control, off-site or nonprocess-related recycling, or incineration.

"Toxic or hazardous substance" means (i) all of the chemicals identified on the Toxic Chemical List established pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq. (P.L. 99-499), and (ii) all of the chemicals listed pursuant to §§ 101 (14) and 102 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (P.L. 92-500).

§ 10.1-1425.11. Establishment of pollution prevention policy.

It shall be the policy of the Commonwealth (i) that the Commonwealth should encourage pollution prevention activities by removing barriers and providing incentives and assistance, and (ii) that the generation of environmental waste should be reduced or eliminated at the source, whenever feasible; environmental waste that is generated should be reused whenever feasible; environmental waste that cannot be reduced or reused should be recycled whenever feasible; environmental waste that cannot be reduced, reused, or recycled should be treated in an environmentally safe manner; and disposal should be employed only as a last resort and should be conducted in an environmentally safe manner. It shall also be the policy of the Commonwealth to minimize the transfer of environmental wastes from one environmental medium to another.

§ 10.1-1425.12. Pollution prevention assistance program.

The Department shall establish a voluntary pollution prevention assistance program designed to assist all persons in promoting pollution prevention measures in the Commonwealth. The program shall emphasize assistance to local governments and businesses that have inadequate technical and financial resources to obtain information and to assess and implement pollution prevention measures. The program may include, but shall not be limited to:

1. Establishment of a pollution prevention clearinghouse for all available information concerning waste reduction, waste minimization, source

reduction, economic and energy savings, and pollution prevention;

2. Assistance in transferring information concerning pollution prevention technologies through workshops, conferences and handbooks;

3. Cooperation with university programs to develop pollution prevention curricula and training;

4. Technical assistance to generators of toxic or hazardous substances, including onsite consultation to identify alternative methods that may be applied to prevent pollution; and

5. Researching and recommending incentive programs for innovative pollution prevention programs.

To be eligible for onsite technical assistance, a generator of toxic or hazardous substances must agree to allow information regarding the results of such assistance to be shared with the public, provided that the identity of the generator shall be made available only with its consent and trade-secret information shall remain protected.

§ 10.1-1425.13. Pollution prevention advisory panels.

The Director is authorized to name qualified persons to pollution prevention advisory panels to assist the Department in administering the pollution prevention assistance program. Panels shall include members representing different areas of interest in and potential support for pollution prevention, including industry, education, environmental and public interest groups, state government and local government.

§ 10.1-1425.14. Pilot projects.

The Department may sponsor pilot projects to develop and demonstrate innovative technologies and methods for pollution prevention. The results of all such projects shall be available for use by the public, but trade secret information shall remain protected.

§ 10.1-1425.15. Waste exchange.

The Department may establish an industrial environmental waste material exchange that provides for the exchange, between interested persons, of information concerning (i) particular quantities of industrial environmental waste available for recovery; (ii) persons interested in acquiring certain types of industrial environmental waste for purposes of recovery; and (iii) methods for the treatment and recovery of industrial environmental waste. The industrial environmental waste materials exchange may be operated under one or more reciprocity

agreements providing for the exchange of the information for similar information from a program operated in another state. The Department may contract for a private person or public entity to establish or operate the industrial environmental waste materials exchange. The Department may prescribe rules concerning the establishment and operation of the industrial environmental waste materials exchange, including the setting of subscription fees to offset the cost of participating in the exchange.

§ 10.1-1425.16. Trade secret protection.

All trade secrets obtained pursuant to this article by the Department or its agents shall be held as confidential.

§ 10.1-1425.17. Evaluation report.

The Department shall submit an annual report to the Governor and the appropriate committees of the General Assembly. The report shall include an evaluation of its pollution prevention activities. The report shall be submitted by December 1 of each year, beginning in 1994. The report shall include, to the extent available, information regarding progress in expanding pollution prevention activities in the Commonwealth.

§ 10.1-1425.18. Pollution prevention grants.

The Department may make grants to identify pollution prevention opportunities and to study or determine the feasibility of applying specific technologies and methods to prevent pollution. Persons who use, generate or release environmental waste may receive grants under this section.

§ 10.1-1425.19. Inspections and enforcement actions by the Department.

A. The Department shall seek to ensure, where appropriate, that any inspections conducted pursuant to Chapters 13 (§ 10.1-1300 et seq.) and 14 (§ 10.1-1400 et seq.) of this title and Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 (i) are multimedia in approach; (ii) are performed by teams of inspectors authorized to represent the air, water and solid waste programs within the Department; and (iii) minimize duplication of inspections, reporting requirements, and enforcement efforts.

B. The Department may allow any person found to be violating any law or standard for which the Department has enforcement jurisdiction to develop a

plan to reduce the use or generation of toxic or hazardous substances through pollution prevention incentives or initiatives and, to the maximum extent possible, implement the plan as part of coming into compliance with the violated law or standard. This shall in no way affect the Commonwealth's ability and responsibility to seek penalties in enforcement activities.

§ 10.1-1425.20. Findings and intent.

A. The General Assembly finds that:

1. The management of solid waste can pose a wide range of hazards to public health and safety and to the environment;
2. Packaging comprises a significant percentage of the overall waste stream;
3. The presence of heavy metals in packaging is a concern because of the potential presence of heavy metals in residue from manufacturers' recycling processes, in emissions or ash when packaging is incinerated, or in leachate when packaging is landfilled; and
4. Lead, mercury, cadmium, and hexavalent chromium, on the basis of scientific and medical evidence, are of particular concern.

B. It is the intent of the General Assembly to:

1. Reduce the toxicity of packaging;
2. Eliminate the addition of heavy metals to packaging; and
3. Achieve reductions in toxicity without impeding or discouraging the expanded use of recovered material in the production of products, packaging, and its components.

§ 10.1-1425.21. Definitions.

As used in this article, unless the context requires a different meaning:

"Distributor" means any person who takes title to products or packaging purchased for resale.

"Intentional introduction" means the act of deliberately using a regulated heavy metal in the formulation of a package or packaging component where its continued presence in the final package or packaging component is to provide a specific characteristic or quality. The use of a regulated heavy metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, whereupon the incidental retention of a residue of the metal in the final package or packaging component is neither desired nor deliberate

is not considered to be "intentional introduction" where the final package or packaging component is in compliance with subsection C of § 10.1-1425.22. "Manufacturer" means any person that produces products, packages, packaging, or components of products or packaging.

"Package" means any container which provides a means of marketing, protecting, or handling a product, including a unit package, intermediate package, or a shipping container, as defined in the American Society for Testing and Materials (ASTM) specification D996. The term includes, but is not limited to, unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and other trays, wrapping and wrapping film, bags, and tubs.

"Packaging component" means any individual assembled part of a package, including, but not limited to, interior and exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, and labels. Tin-plated steel that meets ASTM specification A-623 shall be considered as a single package component. Electro-galvanized coated steel that meets ASTM specification A-525, and hot-dipped coated galvanized steel that meets ASTM specification A-879 shall be treated in the same manner as tin-plated steel.

§ 10.1-1425.22. Schedule for removal of incidental amounts of heavy metals.

A. On and after July 1, 1995, no manufacturer or distributor shall offer for sale, sell, or offer for promotional purposes in the Commonwealth a package or packaging component which includes, in the package itself or in any packaging component, inks, dyes, pigments, adhesives, stabilizers, or any other additives containing lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution, and which exceeds a concentration level established by this article. This prohibition shall not apply to the incidental presence of any of these elements in a package or packaging component.

B. On and after July 1, 1995, no manufacturer or distributor shall offer for sale, sell, or offer for promotional purposes in the Commonwealth a product in a package which includes, in the package itself or in any of the packaging components, inks, dyes, pigments, adhesives, stabilizers, or any other additives containing lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as

an element during manufacturing or distribution, and which exceeds a concentration level established by this article. This prohibition shall not apply to the incidental presence of any of these elements in a package or packaging component.

C. The sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium present in a package or packaging component shall not exceed the following:

1. Six hundred parts per million by weight on and after July 1, 1995;
2. Two hundred fifty parts per million by weight on and after July 1, 1996; and
3. One hundred parts per million by weight on and after July 1, 1997.

D. Concentration levels of lead, cadmium, mercury, and hexavalent chromium shall be determined using ASTM test methods, as revised, or U.S.

Environmental Protection Agency Test Methods for Evaluating Solid Waste, S-W 846, as revised.

§ 10.1-1425.23. Exemptions.

The following packaging and packaging components shall be exempt from the requirements of this Act:

1. Packaging or packaging components with a code indicating a date of manufacture prior to July 1, 1995;
2. Packages or packaging components to which lead, cadmium, mercury or hexavalent chromium has been added in the manufacturing, forming, printing or distribution process in order to comply with health or safety requirements of federal law, provided that (i) the manufacturer of a package or packaging component must petition the Board for any exemption for a particular package or packaging component; (ii) the Board may grant an exemption for up to two years if warranted by the circumstances; and (iii) such an exemption may, upon reapplication for exemption and meeting the criterion of this subdivision, be renewed at two-year intervals;
3. Packages and packaging components to which lead, cadmium, mercury or hexavalent chromium has been added in the manufacturing, forming, printing or distribution process for which there is no feasible alternative, provided that (i) the manufacturer of a package or packaging component must petition the Board for any exemption for a particular package or packaging component; (ii) the Board may grant an exemption for up to two years if warranted by the circumstances; and (iii) such an exemption may, upon reapplication for exemption and meeting the criterion

of this subdivision, be renewed at two-year intervals. For purposes of this subdivision, a use for which there is no feasible alternative is one in which the regulated substance is essential to the protection, safe handling, or function of the package's contents;

4. Packages and packaging components that would not exceed the maximum contaminant levels established but for the addition of recovered or recycled materials; and

5. Packages and packaging components used to contain alcoholic beverages, as defined in § 4.1-100, bottled prior to July 1, 1992.

§ 10.1-1425.24. Certificate of compliance.

A. On and after July 1, 1995, each manufacturer or distributor of packaging or packaging components shall make available to purchasers, the Department, and the public, upon request, certificates of compliance which state that the manufacturer's or distributor's packaging or packaging components comply with, or are exempt from, the requirements of this article.

B. If the manufacturer or distributor of the package or packaging component reformulates or creates a new package or packaging component that results in an increase in the level of heavy metals higher than the original certificate of compliance, the manufacturer or distributor shall provide an amended or new certificate of compliance for the reformulated package or packaging component.

§ 10.1-1425.25. Promulgation of regulations.

The Board may promulgate regulations if regulations are necessary to implement and manage the provisions of this article. The Director is authorized to name qualified persons to an advisory panel of affected interests and the public to assist the Department in implementing the provisions of this article.

§ [10.1-1425.26](#). Cathode ray tube special waste recycling program.

A. As used in this section "cathode ray tube" means an intact glass tube used to provide the visual display in televisions, computer monitors, oscilloscopes and similar scientific equipment, but does not include the other components of an electronic product containing a cathode ray tube even if the product and the cathode ray tube are disassembled.

B. The Board shall promulgate regulations to encourage cathode ray tube and electronics recycling.

C. Any locality may, by ordinance, prohibit the disposal of cathode ray tubes in any privately operated landfill within its jurisdiction, provided the locality has implemented a recycling program that is capable of handling all cathode ray tubes generated within its jurisdiction. However, no such ordinance shall contain any provision that penalizes anyone other than the initial generator of such cathode ray tubes.

§ 10.1-1426. Permits required; waiver of requirements; reports; conditional permits.

A. No person shall transport, store, provide treatment for, or dispose of a hazardous waste without a permit from the Director.

B. Any person generating, transporting, storing, providing treatment for, or disposing of a hazardous waste shall report to the Director, by such date as the Board specifies by regulation, the following: (i) his name and address, (ii) the name and nature of the hazardous waste, and (iii) the fact that he is generating, transporting, storing, providing treatment for or disposing of a hazardous waste. A person who is an exempt small quantity generator of hazardous wastes, as defined by the administrator of the Environmental Protection Agency, shall be exempt from the requirements of this subsection.

C. Any permit shall contain the conditions or requirements required by the Board's regulations and the federal acts.

D. Upon the issuance of an emergency permit for the storage of hazardous waste, the Director shall notify the chief administrative officer of the local government for the jurisdiction in which the permit has been issued.

E. The Director may deny an application under this article on any grounds for which a permit may be amended, suspended or revoked listed under subsection A of § 10.1-1427.

F. Any locality or state agency may collect hazardous waste from exempt small quantity generators for shipment to a permitted treatment or disposal facility if done in accordance with (i) a permit to store, treat, or dispose of hazardous waste issued pursuant to this chapter or (ii) a permit to transport hazardous waste, and the wastes collected are stored for no more than 10 days prior to shipment to a permitted treatment or disposal facility. If household hazardous waste is collected and managed with hazardous wastes collected from exempt small quantity generators, all

waste shall be managed in accordance with the provisions of this subsection.

§ 10.1-1427. Revocation, suspension or amendment of permits.

A. Any permit issued by the Director pursuant to this article may be revoked, amended or suspended on any of the following grounds or on such other grounds as may be provided by the regulations of the Board:

1. The permit holder has violated any regulation or order of the Board, any condition of a permit, any provision of this chapter, or any order of a court, where such violation (i) results in a release of harmful substances into the environment, (ii) poses a threat of release of harmful substances into the environment, (iii) presents a hazard to human health, or (iv) is representative of a pattern of serious or repeated violations which, in the opinion of the Director, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations or requirements;
2. The person to whom the permit was issued abandons, sells, leases or ceases to operate the facility permitted;
3. The facilities used in the transportation, storage, treatment or disposal of hazardous waste are operated, located, constructed or maintained in such a manner as to pose a substantial present or potential hazard to human health or the environment, including pollution of air, land, surface water or ground water;
4. Such protective construction or equipment as is found to be reasonable, technologically feasible and necessary to prevent substantial present or potential hazard to human health and welfare or the environment has not been installed at a facility used for the storage, treatment or disposal of a hazardous waste; or
5. Any key personnel have been convicted of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act (§ 54.1-3400 et seq.); racketeering; violation of antitrust laws;

or has been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth, or any other state and the Director determines that such conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner, as to warrant denial, revocation, amendment or suspension of the permit.

In making such determination, the Director shall consider:

- a. The nature and details of the acts attributed to key personnel;
- b. The degree of culpability of the applicant, if any;
- c. The applicant's policy or history of discipline of key personnel for such activities;
- d. Whether the applicant has substantially complied with all rules, regulations, permits, orders and statutes applicable to the applicant's activities in Virginia;
- e. Whether the applicant has implemented formal management control to minimize and prevent the occurrence of such violations; and
- f. Mitigation based upon demonstration of good behavior by the applicant including, without limitation, prompt payment of damages, cooperation with investigations, termination of employment or other relationship with key personnel or other persons responsible for the violations or other demonstrations of good behavior by the applicant that the Director finds relevant to his decision.

B. The Director may amend or attach conditions to a permit when:

1. There is a significant change in the manner and scope of operation which may require new or additional permit conditions or safeguards to protect the public health and environment;
2. There is found to be a possibility of pollution causing significant adverse effects on the air, land, surface water or ground water;
3. Investigation has shown the need for additional equipment, construction, procedures and testing to ensure the protection of the public health and the environment from significant adverse effects; or
4. The amendment is necessary to meet changes in applicable regulatory requirements.

C. If the Director finds that hazardous wastes are no longer being stored, treated or disposed of at a facility in accordance with Board regulations, the Director may revoke the permit issued for such facility or, as a condition to granting or continuing in effect a permit,

may require the person to whom the permit was issued to provide perpetual care and surveillance of the facility.

§ 10.1-1428. Financial responsibility for abandoned facilities; penalties.

A. The Board shall promulgate regulations which ensure that, if a facility in which hazardous waste is stored, treated, or disposed is closed or abandoned, the costs associated with protecting the public health and safety from the consequences of such abandonment may be recovered from the person abandoning the facility.

B. Such regulations may include bonding requirements, the creation of a trust fund to be maintained within the Department, self-insurance, other forms of commercial insurance, or other mechanisms that the Department deems appropriate. Regulations governing the amount thereof shall take into consideration the potential for contamination and injury by the hazardous waste, the cost of disposal of the hazardous waste and the cost of restoring the facility to a safe condition.

C. No state agency shall be required to comply with such regulations.

D. Forfeiture of any financial obligation imposed pursuant to this section shall not relieve any holder of a permit issued pursuant to this article of any other legal obligations for the consequences of abandonment of any facility.

E. Any funds forfeited pursuant to this section and the regulations of the Board shall be paid to the county, city or town in which the abandoned facility is located. The county, city or town in which the facility is located shall expend the forfeited funds as necessary to restore and maintain the facility in a safe condition.

F. Any person who knowingly and willfully abandons a hazardous waste management facility without proper closure or without providing adequate financial assurance instruments for such closure shall, if such failure to close results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat. Any person who knowingly and willfully abandons a hazardous waste management facility without proper closure or without providing adequate financial

assurance instruments for such closure shall, if such failure to close results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

§ 10.1-1429. Notice of release of hazardous substance. Any person responsible for the release of a hazardous substance from a fixed facility which poses an immediate or imminent threat to public health and who is required by law to notify the National Response Center shall notify the chief administrative officer or his designee of the local government of the jurisdiction in which the release occurs and shall also notify the Department.

§ 10.1-1429.1. Repealed.

§ 10.1-1429.2. Repealed.

§ 10.1-1429.3. Repealed.

§ 10.1-1429.4. Repealed.

[NOTE: § 10.1-1429.5. Virginia Voluntary Remediation Fund established; uses. This section is not set out. The language does not take effect unless an appropriation effectuating the purposes of the 2001 Acts, Chapter 587, is included in an appropriation act up through the 2004 Appropriation Act.]

§ 10.1-1430. Authority of Governor to enter into agreements with federal government; effect on federal licenses.

The Governor is authorized to enter into agreements with the federal government providing for discontinuance of the federal government's responsibilities with respect to low-level radioactive waste and the assumption thereof by the Commonwealth.

§ 10.1-1431. Authority of Board to enter into agreements with federal government, other states or interstate agencies; training programs for personnel.

A. The Board, with the prior approval of the Governor, is authorized to enter into agreements with the federal government, other states or interstate agencies, whereby the Commonwealth will perform, on a cooperative basis with the federal government, other states or interstate agencies, inspections or other functions relating to control of low-level radioactive waste.

B. The Board may institute programs to train personnel to carry out the provisions of this article and, with the prior approval of the Governor, may make such personnel available for participation in any program of the federal government, other states or interstate agencies in furtherance of this chapter.

§ 10.1-1432. Further powers of Board.

The Board shall have the power, subject to the approval of the Governor:

1. To acquire by purchase, exercise the right of eminent domain as provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 grant, gift, devise or otherwise, the fee simple title to or any acceptable lesser interest in any lands, selected in the discretion of the Board as constituting necessary, desirable or acceptable sites for low-level radioactive waste management, including lands adjacent to a project site as in the discretion of the Board may be necessary or suitable for restricted areas. In all instances lands that are to be designated as radioactive waste material sites shall be acquired in fee simple absolute and dedicated in perpetuity to such purpose;
2. To convey or lease, for such term as in the discretion of the Board may be in the public interest, any lands so acquired, either for a fair and reasonable consideration or solely or partly as an inducement to the establishment or location in the Commonwealth of any scientific or technological facility, project, satellite project or nuclear storage area; but subject to such restraints as may be deemed proper to bring about a reversion of title or termination of any lease if the grantee or lessee ceases to use the premises or facilities in the conduct of business or activities consistent with the purposes of this article. However, radioactive waste material sites may be leased but may not otherwise be disposed of except to another department, agency or institution of the Commonwealth or to the United States;
3. To assume responsibility for perpetual custody and maintenance of radioactive waste held for custodial purposes at any publicly or privately operated facility located within the Commonwealth if the parties operating such facilities abandon their responsibility and whenever the federal government or any of its agencies has not assumed the responsibility. In such event, the Board may collect fees from private or public parties holding radioactive waste for perpetual custodial purposes in order to finance such perpetual custody and maintenance as the Board may undertake.

The fees shall be sufficient in each individual case to defray the estimated cost of the Board's custodial management activities for that individual case. All such fees, when received by the Board, shall be credited to a special fund of the Department, shall be used exclusively for maintenance costs or for otherwise satisfying custodial and maintenance obligations; and

4. To enter into an agreement with the federal government or any of its authorized agencies to assume perpetual maintenance of lands donated, leased, or purchased from the federal government or any of its authorized agencies and used as custodial sites for radioactive waste.

§ 10.1-1433. Definitions.

As used in this article, unless the context requires a different meaning:

"Applicant" means the person applying for a certification of site suitability or submitting a notice of intent to apply therefor.

"Application" means an application to the Board for a certification of site suitability.

"Certification of site suitability" or "certification" means the certification issued by the Board pursuant to this chapter.

"Criteria" means the criteria adopted by the Board, pursuant to § 10.1-1436.

"Fund" means the Technical Assistance Fund created pursuant to § 10.1-1448.

"Hazardous waste facility" or "facility" means any facility, including land and structures, appurtenances, improvements and equipment for the treatment, storage or disposal of hazardous wastes, which accepts hazardous waste for storage, treatment or disposal. For the purposes of this article, it does not include: (i) facilities which are owned and operated by and exclusively for the on-site treatment, storage or disposal of wastes generated by the owner or operator; (ii) facilities for the treatment, storage or disposal of hazardous wastes used principally as fuels in an on-site production process; (iii) facilities used exclusively for the pretreatment of wastes discharged directly to a publicly owned sewage treatment works.

"Hazardous waste management facility permit" means the permit for a hazardous waste management facility issued by the Director or the U.S. Environmental Protection Agency.

"Host community" means any county, city or town within whose jurisdictional boundaries construction of a hazardous waste facility is proposed.

"On-site" means facilities that are located on the same or geographically contiguous property which may be divided by public or private right-of-way, and the entrance and exit between the contiguous properties is at a cross-roads intersection so that the access is by crossing, as opposed to going along, the right-of-way. On-site also means noncontiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access.

"Operator" means a person who is responsible for the overall operation of a facility.

"Owner" means a person who owns a facility or a part of a facility.

"Storage" means the containment or holding of hazardous wastes pending treatment, recycling, reuse, recovery or disposal.

"Treatment" means any method, technique or process, including incineration or neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste to neutralize it or to render it less hazardous or nonhazardous, safer for transport, amenable to recovery or storage or reduced in volume.

#### § 10.1-1434. Additional powers and duties of the Board.

A. In addition to its other powers and duties, with regard to hazardous waste the Board shall have the power and duty to:

1. Require that hazardous waste is treated, stored and disposed of properly;
2. Provide information to the public regarding the proper methods of hazardous waste disposal;
3. Establish procedures, where feasible, to eliminate or reduce the disproportionate burden which may be placed on a community in which is located a hazardous waste treatment, storage or disposal facility, by any means appropriate, including mitigation or compensation;
4. Require that the Department compiles, maintains, and makes available to the public, information on the use and availability of conflict resolution techniques so that controversies and conflicts over the local impacts of hazardous waste facility siting decisions may be resolved by negotiation, mediation or similar techniques;

5. Encourage, whenever possible, alternatives to land burial of hazardous wastes, which will reduce, separate, neutralize, recycle, exchange or destroy hazardous wastes; and

6. Regulate hazardous waste treatment, storage and disposal facilities and require that the costs of long-term post-closure care and maintenance of these facilities is born by their owners and operators.

B. In addition to its other powers and duties, with regard to certification of hazardous waste facility sites the Board shall have the power and duty to:

1. Subject to the approval of the Governor, request the use of the resources and services of any state department or agency for technical assistance in the performance of the Board's duties;
2. Hold public meetings or hearings on any matter related to the siting of hazardous waste facilities;
3. Coordinate the preparation of and to adopt criteria for the siting of hazardous waste facilities;
4. Grant or deny certification of site approval for construction of hazardous waste facilities;
5. Promulgate regulations and procedures for approval of hazardous waste facility sites;
6. Adopt a schedule of fees to charge applicants and to collect fees for the cost of processing applications and site certifications; and
7. Perform any acts authorized by this chapter under, through or by means of its own officers, agents and employees, or by contract with any person.

#### § 10.1-1435. Certification of site approval required; "construction" defined; remedies.

A. No person shall construct or commence construction of a hazardous waste facility without first obtaining a certification of site approval by the Board in the manner prescribed herein. For the purpose of this section, "construct" and "construction" mean (i) with respect to new facilities, the significant alteration of a site to install permanent equipment or structures or the installation of permanent equipment or structures; (ii) with respect to existing facilities, the alteration or expansion of existing structures or facilities to initially accommodate hazardous waste, any expansion of more than fifty percent of the area or capacity of an existing hazardous waste facility, or any change in design or process of a hazardous waste facility that will, in the opinion of the Board, result in a substantially different type of facility. Construction does not include preliminary engineering or site surveys, environmental studies, site acquisition,

acquisition of an option to purchase or activities normally incident thereto.

B. Upon receiving a written request from the owner or operator of the facility, the Board may allow, without going through the procedures of this article, any changes in the facilities which are designed to:

1. Prevent a threat to human health or the environment because of an emergency situation;
2. Comply with federal or state laws and regulations;
- or
3. Demonstrably result in safer or environmentally more acceptable processes.

C. Any person violating this section may be enjoined by the circuit court of the jurisdiction wherein the facility is located or the proposed facility is to be located. Such an action may be instituted by the Board, the Attorney General, or the political subdivision in which the violation occurs. In any such action, it shall not be necessary for the plaintiff to plead or prove irreparable harm or lack of an adequate remedy at law. No person shall be required to post any injunction bond or other security under this section. No action may be brought under this section after a certification of site approval has been issued by the Board, notwithstanding the pendency of any appeals or other challenges to the Board's action. In any action under this section, the court may award reasonable costs of litigation, including attorney and expert witness fees, to any party if the party substantially prevails on the merits of the case and if in the determination of the court the party against whom the costs are awarded has acted unreasonably.

#### § 10.1-1436. Site approval criteria.

A. The Board shall promulgate criteria for approval of hazardous waste facility sites. The criteria shall be designed to prevent or minimize the location, construction, or operation of a hazardous waste facility from resulting in (i) any significant adverse impact on the environment and natural resources, and (ii) any significant adverse risks to public health, safety or welfare. The criteria shall also be designed to eliminate or reduce to the extent practicable any significant adverse impacts on the quality of life in the host community and the ability of its inhabitants to maintain quiet enjoyment of their property. The criteria shall ensure that previously approved local comprehensive plans are considered in the certification of hazardous waste facility sites.

B. To avoid, to the maximum extent feasible, duplication with existing agencies and their areas of responsibility, the criteria shall reference, and the Board shall list in the draft and final certifications required hereunder, the agency approvals required and areas of responsibility concerning a site and its operation. The Board shall not review or make findings concerning the adequacy of those agency approvals and areas of responsibility.

C. The Board shall make reasonable efforts to reduce or eliminate duplication between the criteria and other applicable regulations and requirements.

D. The criteria may be amended or modified by the Board at any time.

#### § 10.1-1437. Notice of intent to file application for certification of site approval.

A. Any person may submit to the Board a notice of intent to file an application for a certification of site approval. The notice shall be in such form as the Board may prescribe by regulation. Knowingly falsifying information, or knowingly withholding any material information, shall void the notice and shall constitute a felony punishable by confinement in the penitentiary for one year or, in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months, a fine of not more than \$10,000, or both.

Any state agency filing a notice of intent shall include therein a statement explaining why the Commonwealth desires to build a hazardous waste facility and how the public interest would be served thereby.

B. Within forty-five days of receipt of such a notice, the Board shall determine whether it is complete. The Board shall reject any incomplete notice, advise the applicant of the information required to complete it, and allow reasonable time to correct any deficiencies.

C. Upon receipt of the notice, the Board, at the applicant's expense, shall:

1. Deliver or cause to be delivered a copy of the notice of intent together with a copy of this article to the governing body of each host community and to each person owning property immediately adjoining the site of the proposed facility; and
2. Have an informative description of the notice published in a newspaper of general circulation in each host community once each week for four successive weeks. The description shall include the name and address of the applicant, a description of the

proposed facility and its location, the places and times where the notice of intent may be examined, the address and telephone number of the Board or other state agency from which information may be obtained, and the date, time and location of the initial public briefing meeting on the notice.

§ 10.1-1438. Powers of governing body of host community; technical assistance.

A. The governing body of a host community shall have the power to:

1. Hire and pay consultants and other experts on behalf of the host community in matters pertaining to the siting of the facility;

2. Receive and disburse moneys from the fund, and any other moneys as may be available; and

3. Enter into a contract, which may be assignable at the parties' option, binding upon the governing body of the host community and enforceable against it and future governing bodies of the host community in any court of competent jurisdiction, with an applicant by signing a siting agreement pursuant to § 10.1-1442.

B. The Board shall make available to the governing body from the fund a reasonable sum of money to be determined by the Board. This shall be used by the governing body to hire consultants to provide it with technical assistance and information necessary to aid the governing body in its review of the siting proposal, negotiations with the applicant and the development of a siting agreement.

Unused moneys from the fund shall be returned to the Board. The governing body shall provide the Board with a certified accounting statement of any moneys expended from the fund.

C. The governing body of the host community may appoint a local advisory committee to facilitate communication and the exchange of information among the local government, the community, the applicant and the Board.

D. Notwithstanding the foregoing provisions of this article, the governing body of a host community may notify the Board, within fifteen days after the briefing meeting pursuant to § 10.1-1439, that it has elected to waive further participation under the provisions of this article. After receiving notification from the host community, the Board may issue certification of site approval without further participation by the host community under the provisions of this section and § 10.1-1442. Nothing shall prevent a host community from submitting comments on the application or

participating in any public hearing or meeting held pursuant to this chapter, nor shall the host community be precluded from enforcing its regulations and ordinances as provided by subsection G of § 10.1-1446.

§ 10.1-1439. Briefing meetings.

A. Not more than seventy-five nor less than sixty days after the delivery of the notice of intent to the host community, the Board shall conduct a briefing meeting in or in reasonable proximity to the host community. A quorum of the Board shall be present. Notice of the date, time, place and purpose of the briefing session shall be prepared by the Board and shall accompany the notice of intent delivered pursuant to subdivision 1 of subsection C of § 10.1-1437 and shall be included in the notice published pursuant to subdivision 2 of subsection C of § 10.1-1437.

At least one representative of the applicant shall be present at the briefing meeting.

The Board shall adopt procedures for the conduct of briefing meetings. The briefing meeting shall provide information on the proposed site and facility and comments, suggestions and questions thereon shall be received.

B. The Board may conduct additional briefing meetings at any time in or near a host community, provided that at least fifteen days in advance of a meeting, notice of the date, time, place and purpose of the meeting is delivered in writing to the applicant, each member of the governing body and to all owners of property adjoining the proposed site.

C. A stenographic or electronic record shall be made of all briefing meetings. The record shall be available for inspection during normal business hours.

§ 10.1-1440. Impact analysis.

A. The applicant shall submit to the Board a draft impact analysis for the proposed facility within ninety days after the initial briefing meeting. At the applicant's expense, copies of the draft impact analysis shall be furnished as follows: five to the host community, and one to each person owning property adjoining the site of the proposed facility. At least one copy shall be made available at a convenient location in the host community for public inspection and copying during normal business hours.

B. The draft impact analysis shall include a detailed assessment of the project's suitability with respect to

the criteria and other information the Board may require by regulation.

C. The Board, at the applicant's expense, shall cause notice of the filing of the draft impact analysis to be made in the manner provided in § 10.1-1447 within ten days of receipt. The notice shall include (i) a general description of the analysis, (ii) a list of recipients, (iii) a description of the places and times that the analysis will be available for inspection, (iv) a description of the Board's procedures for receiving comments on the analysis, and (v) the addresses and telephone numbers for obtaining information from the Board.

D. The Board shall allow forty-five days after publication of notice for comment on the draft impact analysis. No sooner than thirty and no more than forty days after publication of notice of the draft impact analysis, the Board shall conduct a public meeting on the draft impact analysis in or near the host community. The meeting shall be for the purpose of explaining, answering questions and receiving comments on the draft impact analysis. A representative of the governing body and a representative of the applicant shall be present at the meeting.

E. Within ten days after the close of the comment period, the Board shall forward to the applicant a copy of all comments received on the draft impact analysis, together with its own comments.

F. The applicant shall prepare and submit a final impact analysis to the Board after receiving the comments. The final impact analysis shall reflect the comments as they pertain to each of the items listed in subsection B of this section. Upon request, a copy of the final impact analysis shall be provided by the applicant to each of the persons who received the draft impact analysis.

G. This section shall not apply when the host community has elected to waive participation under subsection D of § 10.1-1438.

§ 10.1-1441. Application for certification of site approval.

A. At any time within six months after submission of the final impact analysis, the applicant may submit to the Board an application for certification of site approval. The application shall contain:

1. Conceptual engineering designs for the proposed facility;

2. A detailed description of the facility's suitability to meet the criteria promulgated by the Board, including any design and operation measures that will be necessary or otherwise undertaken to meet the criteria; and

3. A siting agreement, if one has been executed pursuant to subsection C of § 10.1-1442, or, if none has been executed, a statement to that effect.

B. The application shall be accompanied by whatever fee the Board, by regulation, prescribes pursuant to § 10.1-1434.

C. The Board shall review the application for completeness and notify the applicant within fifteen days of receipt that the application is incomplete or complete.

If the application is incomplete, the Board shall advise the applicant of the information necessary to make the application complete. The Board shall take no further action until the application is complete.

If the application is complete, the Board shall direct the applicant to furnish copies of the application to the following: five to the host community, one to the Director, and one to each person owning property adjoining the proposed site. At least one copy of the application shall be made available by the applicant for inspection and copying at a convenient place in a host community during normal business hours.

D. The Board shall cause notice of the application to be made in the manner provided in § 10.1-1447 and shall notify each governing body that upon publication of the notice the governing body shall conclude all negotiations with the applicant within thirty days of publication of the notice. The applicant and the governing body may, by agreement, extend the time for negotiation to a fixed date and shall forthwith notify the Board of this date. The Board may also extend the time to a fixed date for good cause shown. If the host community has waived participation under the provisions of subsection D of § 10.1-1438, the Board shall, at the time that notice of the application is made, request that the governing body submit, within thirty days of receiving notice, a report meeting the requirements of subdivision 2 of subsection E of this section.

E. At the end of the period specified in subsection D of this section, a governing body shall submit to the Board and to the applicant a report containing:

1. A complete siting agreement, if any, or in case of failure to reach full agreement, a description of points of agreement and unresolved points; and

2. Any conditions or restrictions on the construction, operation or design of the facility that are required by local ordinance.

F. If the report is not submitted within the time required, the Board may proceed as specified in subsection A of § 10.1-1443.

G. The applicant may submit comments on the report of the governing body at any time prior to the issuance of the draft certification of site approval.

H. Notwithstanding any other provision of this chapter, if the host community has notified the Board, pursuant to subsection D of § 10.1-1438, that it has elected to waive further participation hereunder, the Board shall so notify the applicant within fifteen days of receipt of notice from the host community, and shall advise the applicant of the time for submitting its application for certification of site approval. The applicant shall submit its application within the time prescribed by the Board, which time shall not be less than ninety days unless the applicant agrees to a shorter time.

§ 10.1-1442. Negotiations; siting agreement.

A. The governing body or its designated representatives and the applicant, after submission of notice of intent to file an application for certification of site approval, may meet to discuss any matters pertaining to the site and the facility, including negotiations of a siting agreement. The time and place of any meeting shall be set by agreement, but at least forty-eight hours' notice shall be given to members of the governing body and the applicant.

B. The siting agreement may include any terms and conditions, including mitigation of adverse impacts and financial compensation to the host community, concerning the facility.

C. The siting agreement shall be executed by the signatures of (i) the chief executive officer of the host community, who has been so directed by a majority vote of the local governing body, and (ii) the applicant or authorized agent.

D. The Board shall assist in facilitating negotiations between the local governing body and the applicant.

E. No injunction, stay, prohibition, mandamus or other order or writ shall lie against the conduct of negotiations or discussions concerning a siting agreement or against the agreement itself, except as they may be conducted in violation of the provisions of this chapter or any other state or federal law.

§ 10.1-1443. Draft certification of site approval.

A. Within thirty days after receipt of the governing body's report or as otherwise provided in subsection F of § 10.1-1441, the Board shall issue or deny a draft certification of site approval.

When application is made pursuant to subsection H of § 10.1-1441, the Board shall issue or deny draft certification of site approval within ninety days after receipt of the completed application.

B. The Board may deny the application for certification of site approval if it finds that the applicant has failed or refused to negotiate in good faith with the governing body for the purpose of attempting to develop a siting agreement.

C. The draft certification of site approval shall specify the terms, conditions and requirements that the Board deems necessary to protect health, safety, welfare, the environment and natural resources.

D. Copies of the draft certification of site approval, together with notice of the date, time and place of public hearing required under § 10.1-1444, shall be delivered by the Board to the governing body of each host community, and to persons owning property adjoining the site for the proposed facility. At least one copy of the draft certification shall be available at a convenient location in the host community for inspection and copying during normal business hours.

§ 10.1-1444. Public hearing on draft certification of site approval.

A. The Board shall conduct a public hearing on the draft certification not less than fifteen nor more than thirty days after the first publication of notice. A quorum of the Board shall be present. The hearing shall be conducted in the host community.

B. Notice of the hearing shall be made at the applicant's expense and in the manner provided in § 10.1-1447. It shall include:

1. A brief description of the terms and conditions of the draft certification;
2. Information describing the date, time, place and purpose of the hearing;
3. The name, address and telephone number of an official designated by the Board from whom interested persons may obtain access to documents and information concerning the proposed facility and the draft application;
4. A brief description of the rules and procedures to be followed at the hearing and the time for receiving comments; and

5. The name, address and telephone number of an official designated by the Board to receive written comments on the draft certification.

C. The Board shall designate a person to act as hearing officer for the receipt of comments and testimony at the public hearing. The hearing officer shall conduct the hearing in an expeditious and orderly fashion, according to such rules and procedures as the Board shall prescribe.

D. A transcript of the hearing shall be made and shall be incorporated into the hearing record.

E. Within fifteen days after the close of the hearing, the hearing officer shall deliver a copy of the hearing record to each member of the Board. The hearing officer may prepare a summary to accompany the record, and this summary shall become part of the record.

§ 10.1-1445. Final decision on certification of site approval.

A. Within forty-five days after the close of the public hearing, the Board shall meet within or near the host community and shall vote to issue or deny the certification of site approval. The Board may include in the certification any terms and conditions which it deems necessary and appropriate to protect and prevent injury or adverse risk to health, safety, welfare, the environment and natural resources. At least seven days' notice of the date, time, place and purpose of the meeting shall be made in the manner provided in § 10.1-1447. No testimony or evidence will be received at the meeting.

B. The Board shall grant the certification of site approval if it finds:

1. That the terms and conditions thereof will protect and prevent injury or unacceptable adverse risk to health, safety, welfare, the environment and natural resources;
2. That the facility will comply and be consistent with the criteria promulgated by the Board; and
3. That the applicant has made reasonable and appropriate efforts to reach a siting agreement with the host community including, though not limited to, efforts to mitigate or compensate the host community and its residents for any adverse economic effects of the facility. This requirement shall not apply when the host community has waived participation pursuant to subsection D of § 10.1-1438.

C. The Board's decision to grant or deny certification shall be based on the hearing record and shall be

accompanied by the written findings of fact and conclusions upon which the decision was based. The Board shall provide the applicant and the governing body of the host community with copies of the decision, together with the findings and conclusions, by certified mail.

D. The grant or denial of certification shall constitute final action by the Board.

§ 10.1-1446. Effect of certification.

A. Grant of certification of site approval shall supersede any local ordinance or regulation that is inconsistent with the terms of the certification. Nothing in this chapter shall affect the authority of the host community to enforce its regulations and ordinances to the extent that they are not inconsistent with the terms and conditions of the certification of site approval. Grant of certification shall not preclude or excuse the applicant from the requirement to obtain approval or permits under this chapter or other state or federal laws. The certification shall continue in effect until it is amended, revoked or suspended.

B. The certification may be amended for cause under procedures and regulations prescribed by the Board.

C. The certification shall be terminated or suspended (i) at the request of the owner of the facility; (ii) upon a finding by the Board that conditions of the certification have been violated in a manner that poses a substantial risk to health, safety or the environment; (iii) upon termination of the hazardous waste facility permit by the Director or the EPA Administrator; or (iv) upon a finding by the Board that the applicant has knowingly falsified or failed to provide material information required in the notice of intent and application.

D. The facility owner shall promptly notify the Board of any changes in the ownership of the facility or of any significant changes in capacity or design of the facility.

E. Nothing in the certification shall constitute a defense to liability in any civil action involving private rights.

F. The Commonwealth may not acquire any site for a facility by eminent domain prior to the time certification of site approval is obtained. However, any agency or representative of the Commonwealth may enter upon a proposed site pursuant to the provisions of § 25.1-203.

G. The governing body of the host community shall have the authority to enforce local regulations and

ordinances to the extent provided by subsection A of this section and the terms of the siting agreement. The local governing body may be authorized by the Board to enforce specified provisions of the certification.

§ 10.1-1447. Public participation; notice.

A. Public participation in the development, revision and implementation of regulations and programs under this chapter shall be provided for, encouraged and assisted by the Board.

B. Whenever notice is required to be made under the terms of this chapter, unless the context expressly and exclusively provides otherwise, it shall be disseminated as follows:

1. By publication once each week for two successive weeks in a newspaper of general circulation within the area to be affected by the subject of the notice;
2. By broadcast over one or more radio stations within the area to be affected by the subject of the notice;
3. By mailing to each person who has asked to receive notice; and
4. By such additional means as the Board deems appropriate.

C. Every notice shall provide a description of the subject for which notice is made and shall include the name and telephone number of a person from whom additional information may be obtained.

§ 10.1-1448. Technical Assistance Fund.

A special fund, to be known as the Technical Assistance Fund, is created in the Office of the State Treasurer. The Fund shall consist of appropriations made to the Fund by the General Assembly. The Board shall make moneys from the Fund available to any host community for the purposes set out in subsection C of § 10.1-1438.

§ 10.1-1449. Siting Dedicated Revenue Fund.

There is hereby established in the state treasury a special dedicated revenue fund to be designated as the "Siting Dedicated Revenue Fund," which shall consist of fees and other payments made by applicants to process applications for site certification as provided in § 10.1-1434, and other moneys appropriated thereto, gifts, grants, and the interest accruing thereon.

§ 10.1-1450. Waste Management Board to promulgate regulations regarding hazardous materials.

The Board shall promulgate regulations designating the manner and method by which hazardous materials

shall be loaded, unloaded, packed, identified, marked, placarded, stored and transported. Such regulations shall be no more restrictive than any applicable federal laws or regulations.

§ 10.1-1451. Enforcement of article and regulations.

The Department of State Police and all other law-enforcement officers of the Commonwealth who have satisfactorily completed the course in Hazardous Materials Compliance and Enforcement as prescribed by the U.S. Department of Transportation, Research and Special Programs Administration, Office of Hazardous Materials Transportation, in federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials, shall enforce the provisions of this article, and any rule or regulation promulgated hereunder. Those law-enforcement officers certified to enforce the provisions of this article and any regulation promulgated hereunder, shall annually receive in-service training in current federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials.

§ 10.1-1452. Article not to preclude exercise of certain regulatory powers.

The provisions of this article shall not preclude the exercise of the statutory and regulatory powers of any agency, department or political subdivision of the Commonwealth having statutory authority to regulate hazardous materials on specified highways or portions thereof.

§ 10.1-1453. Exceptions.

This article shall not apply to regular military or naval forces of the United States, the duly authorized militia of any state or territory thereof, police or fire departments, or sheriff's offices and regional jails of this Commonwealth, provided the same are acting within their official capacity and in the performance of their duties, or to the transportation of hazardous radioactive materials in accordance with § 44-146.30.

§ 10.1-1454. Transportation under United States regulations.

Any person transporting hazardous materials in accordance with regulations promulgated under the laws of the United States, shall be deemed to have complied with the provisions of this article, except

when such transportation is excluded from regulation under the laws or regulations of the United States.

§ 10.1-1454.1. Regulation of wastes transported by water.

A. The Board shall develop regulations governing the commercial transport, loading and off-loading of nonhazardous solid waste (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, and regulated medical waste by ship, barge or other vessel upon the navigable waters of the Commonwealth as are necessary to protect the health, safety, and welfare of the citizens of the Commonwealth and to protect the Commonwealth's environment and natural resources from pollution, impairment or destruction. Included in the regulations shall be provisions governing (i) the issuance of permits by rule to facilities receiving nonhazardous solid waste (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, and regulated medical waste from a ship, barge or other vessel transporting such wastes upon the navigable waters of the Commonwealth and (ii) to the extent allowable under federal law and regulation, the commercial transport of nonhazardous solid wastes (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, and regulated medical waste upon the navigable waters of the Commonwealth and the loading and off-loading of ships, barges and other vessels transporting such waste. Also included in the regulations shall be requirements, to the extent allowable under federal law, that: (a) containers holding wastes be watertight and be designed, constructed, secured and maintained so as to prevent the escape of wastes, liquids and odors and to prevent the loss or spillage of wastes in the event of an accident; (b) containers be tested at least two times a year and be accompanied by a certification from the container owner that such testing has shown that the containers are watertight; (c) each container be listed on a manifest designed to assure that the waste being transported in each

container is suitable for the destination facility; and (d) containers be secured to the barges to prevent accidents during transportation, loading and unloading.

B. A facility utilized to receive nonhazardous solid waste (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, or regulated medical waste from a ship, barge or other vessel regulated pursuant to subsection A, arriving at the facility upon the navigable waters of the Commonwealth, is a solid waste management facility and is subject to the requirements of this chapter. On and after the effective date of the regulations promulgated under subsection A, no new or existing facilities shall receive any wastes regulated under subsection A from a ship, barge or other vessel without a permit issued in accordance with the Board's regulations.

C. 1. The Board shall, by regulation, establish a fee schedule, payable by the owner or operator of any ship, barge or other vessel carrying, loading or off-loading waste regulated under this article on the navigable waters of the Commonwealth, for the purpose of funding the administrative and enforcement costs of this article associated with such operations including, but not limited to, the inspection and monitoring of such ships, barges or other vessels to ensure compliance with this article, and for funding activities authorized by this section to abatement pollution caused by barging of waste, to improve water quality, or for other waste-related purposes. 2. The owner or operator of a facility permitted to receive wastes regulated under this article from a ship, barge or other vessel shall be assessed a permit fee in accordance with the criteria set forth in § 10.1-1402.1. However, such fees shall also include an additional amount to cover the Department's costs for facility inspections that it shall conduct on at least a quarterly basis.

3. The fees collected pursuant to this article shall be deposited into a separate account within the Virginia Waste Management Board Permit Program Fund (§ 10.1-1402.2) and shall be treated as are other moneys in that fund except that they shall only be used for the purposes of this article, and for funding purposes authorized by this article to abate pollution caused by barging of waste, to improve water quality, or for other waste-related purposes.

D. The Board shall promulgate regulations requiring owners and operators of ships, barges and other vessels transporting wastes regulated under this article to demonstrate financial responsibility sufficient to comply with the requirements of this article as a condition of operation. Regulations governing the amount of any financial responsibility required shall take into consideration: (i) the risk of potential damage or injury to state waters and the impairment of beneficial uses that may result from spillage or leakage from the ship, barge or vessel; (ii) the potential costs of containment and cleanup; and (iii) the nature and degree of injury or interference with general health, welfare and property that may result.

E. The owner or operator of a ship, barge or other vessel from which there is spillage or loss to state waters of wastes subject to regulations under this article shall immediately report such spillage or loss in accordance with the regulations of the Board and shall immediately take all such actions as may be necessary to contain and remove such wastes from state waters.

F. No person shall transport wastes regulated under this article on the navigable waters of the Commonwealth by ship, barge or other vessel unless such ship, barge or vessel and the containers carried thereon are designed, constructed, loaded, operated and maintained so as to prevent the escape of liquids, waste and odors and to prevent the loss or spillage of waste in the event of an accident. A violation of this subsection shall be a Class 1 misdemeanor. For the purposes of this subsection, the term "odors" means any emissions that cause an odor objectionable to individuals of ordinary sensibility.

§ 10.1-1454.2. Repealed

§ 10.1-1454.3. Regulation of road transportation of waste.

A. The Board, in consultation with the appropriate agencies, shall develop regulations governing the commercial transport of nonhazardous municipal solid waste, except scrap metal and source-separated recyclables, and regulated medical waste by truck as are necessary to protect the health, safety, and welfare of the citizens of the Commonwealth, and to protect the Commonwealth's environment and natural resources from pollution, impairment, or destruction. Included in the regulations, to the extent allowable under federal law and regulation, shall be provisions:

1. Governing the transport of wastes by truck and the design and construction of the containers and trailers transporting waste by truck so that they will be designed, constructed and maintained so as to, as much as is reasonably practicable, prevent the escape of wastes and liquids and to prevent the loss or spillage of wastes to the extent possible in the event of an accident; and
  2. Requiring owners of trucks transporting wastes regulated under this article to demonstrate financial responsibility sufficient to comply with the requirements of this article as a condition of operation. Regulations governing the amount of any financial responsibility required shall take into consideration (i) the risk of potential damage or injury that may result from spillage or leakage; (ii) the potential costs of containment and cleanup; and (iii) the nature and degree of injury or interference with general health, welfare and property that may result.
- B. The owner or operator of a truck from which there is spillage or loss of wastes subject to regulations under this article shall immediately report such spillage or loss in accordance with the regulations of the Board and shall immediately take all such actions as may be necessary to contain and remove such wastes.
- C. No person shall transport by truck wastes regulated under this article unless the containers carried thereon are designed, constructed, loaded, operated and maintained in accordance with the regulations developed pursuant to subsection A. A violation of this subsection shall be a Class 1 misdemeanor.
- D. For the purposes of this section, the term "truck" means any tractor truck semitrailer combination with four or more axles.

§ 10.1-1455. Penalties and enforcement.

A. Any person who violates any provision of this chapter, any condition of a permit or certification, or any regulation or order of the Board shall, upon such finding by an appropriate circuit court, be assessed a civil penalty of not more than \$25,000 for each day of such violation. All civil penalties under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title.

B. In addition to the penalties provided above, any person who knowingly transports any hazardous waste to an unpermitted facility; who knowingly transports, treats, stores, or disposes of hazardous waste without a permit or in violation of a permit; or who knowingly makes any false statement or representation in any application, disclosure statement, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of hazardous waste program compliance shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than five years and a fine of not more than \$25,000 for each violation, either or both. The provisions of this subsection shall be deemed to constitute a lesser included offense of the violation set forth under subsection I.

Each day of violation of each requirement shall constitute a separate offense.

C. The Board is authorized to issue orders to require any person to comply with the provisions of any law administered by the Board, the Director or the Department, any condition of a permit or certification, or any regulations promulgated by the Board or to comply with any case decision, as defined in § 9-6.14:4, of the Board or Director. Any such order shall be issued only after a hearing with at least thirty days' notice to the affected person of the time, place and purpose thereof. Such order shall become effective not less than fifteen days after mailing a copy thereof by certified mail to the last known address of such person. The provisions of this section shall not affect the authority of the Board to issue separate orders and regulations to meet any emergency as provided in § 10.1-1402.

D. Any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or the Director, any condition of a permit or certification or any provision of this chapter shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

Any person violating or failing, neglecting, or refusing to obey any lawful regulation or order of the Board or the Director, any condition of a permit or certification or any provision of this chapter may be compelled in a proceeding instituted in an appropriate court by the Board or the Director to obey such regulation, permit, certification, order or provision of this chapter and to comply therewith by injunction, mandamus, or other appropriate remedy.

E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for each violation. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city or town in which the violation occurred, to be used to abate environmental pollution in such manner as the court may, by order, direct, except that where the owner in violation is the county, city or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board or the Director, any condition of a permit or any provision of this chapter, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under this section. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

G. In addition to all other available remedies, the Board may issue administrative orders for the violation of (i) any law or regulation administered by the Board; (ii) any condition of a permit or certificate issued pursuant to this chapter; or (iii) any case decision or order of the Board. Issuance of an administrative order shall be a case decision as defined in § 9-6.14:4. Orders issued pursuant to this subsection may include penalties of up to \$25,000 per violation and may compel the taking of corrective actions or the cessation of any activity upon which the order is based. Orders issued pursuant to this subsection shall become effective five days after having been delivered to the affected persons or

mailed by certified mail to the last known address of such persons. Should the Board find that any person is adversely affecting the public health, safety or welfare, or the environment, the Board shall, after a reasonable attempt to give notice, issue, without a hearing, an emergency administrative order directing the person to cease the activity immediately and undertake any needed corrective action, and shall within ten days hold a hearing, after reasonable notice as to the time and place thereof to the person, to affirm, modify, amend or cancel the emergency administrative order. If the Board finds that a person who has been issued an administrative order or an emergency administrative order is not complying with the order's terms, the Board may utilize the enforcement and penalty provisions of this article to secure compliance.

H. In addition to all other available remedies, the Department and generators of recycling residues shall have standing to seek enforcement by injunction of conditions which are specified by applicants in order to receive the priority treatment of their permit applications pursuant to § 10.1-1408.1.

I. Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste in violation of this chapter or in violation of the regulations promulgated by the Board and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than fifteen years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of violating this section, be subject to a fine not exceeding the greater of one million dollars or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person.

J. Criminal prosecutions under this chapter shall be commenced within three years after discovery of the offense, notwithstanding the provisions of any other statute.

K. The Board shall be entitled to an award of reasonable attorneys' fees and costs in any action brought by the Board under this section in which it substantially prevails on the merits of the case, unless special circumstances would make an award unjust.

§ 10.1-1456. Right of entry to inspect, etc.; warrants. Upon presentation of appropriate credentials and upon consent of the owner or custodian, the Director or his designee shall have the right to enter at any reasonable time onto any property to inspect, investigate, evaluate, conduct tests or take samples for testing as he reasonably deems necessary in order to determine whether the provisions of any law administered by the Board, Director or Department, any regulations of the Board, any order of the Board or Director or any conditions in a permit, license or certificate issued by the Board or Director are being complied with. If the Director or his designee is denied entry, he may apply to an appropriate circuit court for an inspection warrant authorizing such investigation, evaluation, inspection, testing or taking of samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2.

§ 10.1-1457. Judicial review.

A. Except as provided in subsection B, any person aggrieved by a final decision of the Board or Director under this chapter shall be entitled to judicial review thereof in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.).

B. Any person who has participated, in person or by the submittal of written comments, in the public comment process related to a final decision of the Board or Director under § 10.1-1408.1 or § 10.1-1426 and who has exhausted all available administrative remedies for review of the Board's or Director's decision, shall be entitled to judicial review thereof in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

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